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### High Anxiety: Racism, the Law, and Legal Education

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# High Anxiety: Racism, the Law, and Legal Education

Elayne E. Greenberg\*

“I have learned over the years that when one’s mind is made up, this diminishes fear.”

– *Rosa Parks, activist and “the mother of the freedom movement.”*

## Abstract

*Conspicuously absent from the United States’ ongoing discourse about its racist history is a more honest discussion about the individual and personal stressors that are evoked in people when they talk about racism. What if they got it wrong? The fear of being cancelled - the public shaming for remarks that are deemed racist - has had a chilling effect on having meaningful conversations about racism. What lost opportunities!*

*This paper moves this discussion into the law school context. How might law schools rethink their law school curricula to more accurately represent the role systemic racism has played in shaping the law while still respecting community members’ different perspectives about racism pedagogy? As in our broader society, law school community members’ fear of “getting it wrong” and possibly*

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*being cancelled has had a chilling effect on having candid conversations about racism within legal education and the law.*

*In this discussion, the author prescribes one of the first dispute system frameworks for implementing pedagogy on racism in law school, highlighting the different racial stressors ignited in doctrinal, clinical, skills, and experiential learning classes. The dispute resolution system is built on a restorative justice framework and draws on an interdisciplinary understanding of the physiology and psychology of racial stressors. Building on that knowledge, the paper explains how racial stressors, if constructively addressed, can actually enhance learning about racism and better prepare law students for real-world practice.*

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### I. Introduction

Racism.<sup>1</sup> As the public outrage for a more truthful accounting of our country's racist history becomes more politicized and incendiary, law schools, too, are being drawn into the fray for perpetuating this false narrative of "justice for all."<sup>2</sup> By the fall of 2020, many law schools were finally hearing the clarion call to revise their law school curricula to include more truthful

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1. Although this paper primarily focuses on the stressors that Black and white people experience when addressing racism, the ideas expressed are also applicable to the racism experienced by other discriminated groups such as Asian, Latinx, and Native Americans. See, e.g., Steven O. Roberts & Michael T. Rizzo, *The Psychology of American Racism*, 76 AM. PSYCH. 475, 475–87 (2021) (calling for an examination and understanding of the psychological and sociocultural conditions that allow racism to fester). Racism is ubiquitous. However, when we attempt to discuss racism among people who are Black, people of color, and white people, the discussion of racism too often devolves into a polarizing defense replete with finger-pointing, denial of our individual responsibility, and stress. Yet, we are all racist. Intentionally or not, we have absorbed the implicit and explicit racist biases throughout our culture about white privilege and Black inferiority. See, e.g., IBRAM X. KENDI, *STAMPED FROM THE BEGINNING: THE DEFINITIVE HISTORY OF RACIST IDEAS IN AMERICA* (2016) (chronicling how racism has been reinforced throughout history in our religions, law, economy, and social structures); Jenée Desmond-Harris, *Implicit Bias Means We're All Probably at Least a Little Bit Racist*, VOX (describing the phenomenon of implicit bias and how implicit bias affects even those who strive to exclude racial biases) [perma.cc/FSL8-63LR]; see also ORIGINAL BROADWAY CAST OF AVENUE Q, *EVERYBODY'S A LITTLE BIT RACIST* (BMG Music 2003) (suggesting that "everyone's a little bit racist" through satirical musical theatre performance); but cf. Michael Shermer, *Are We All Racists Inside?*, SCI. AM. (Aug. 1, 2017) (questioning the validity of the implicit bias tests in predicting implicit biases will result in explicit bias) [perma.cc/MG9W-RN8W].

2. See, e.g., *Their Ancestors Were Enslaved by Law. Today, They are Graduates of the Nation's Preeminent Historically Black Law School.*, N.Y. TIMES MAG.: THE 1619 PROJECT (Aug. 14, 2019) (profiling four recent graduates of Howard University School of Law and connecting their stories to the history of racially discriminatory access to education in the U.S.) [perma.cc/287W-64QL]; Ayesha Rascoe & Alana Wise, *Biden Says the Tulsa Race Massacre 'Can't Be Buried, No Matter How Hard People Try'*, NPR (June 1, 2021, 5:12 PM) ("But as the national conversation has increasingly focused on the issue of systemic racism and police violence over the past several years, the attack has received more attention, both in the mainstream news media and popular culture.") [perma.cc/EY77-T87N]; Anita Gaul, *Telling the Whole Truth of American History*, MARSHALL INDEP. (June 13, 2020) (commenting on how idiomatic descriptions of the U.S. as the "land of the free," or otherwise a beacon of equality shroud the ugly truth of the nation's racist past) [perma.cc/34YV-RT7H].

narratives about the law's racist foundation and to encourage anti-racist actions.<sup>3</sup> In this anti-racist environment, the term "practice-competent" was expanded to include those skills students need to effectively manage the endemic racism that they and their clients are likely to confront in legal practice.<sup>4</sup> It was becoming a moral and economic imperative for law schools to enroll a diverse student body and to showcase diverse faculty.<sup>5</sup> To publicize this anti-racist pivot, many law schools began spotlighting those individual initiatives that reinforced their anti-racist stance: book clubs educating about our racist history,<sup>6</sup> alumni and student-initiated programs that candidly confronted white people's complicit perpetuation of racism,<sup>7</sup> newly-developed courses about race,<sup>8</sup> and

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3. See generally *The New York Area Law School Anti-Racism Consortium* [perma.cc/93BE-PGKL]; Jill Backer, *New York City-Area Law Schools Form Law School Anti-Racism Consortium*, N.Y.L.J. (Jan. 29, 2021, 10:45 AM) [hereinafter *Anti-Racism Consortium Announcement*] [perma.cc/T52F-CSQV].

4. See, e.g., *Anti-Racism Consortium Announcement*, *supra* note 3 (describing the work of the Law School Anti-Racism Consortium, a group of New York law administrators, professors and students who have come together to tackle the problem in a series of programs).

5. See Ilana Kowarski, *46 Racially and Ethnically Diverse Law Schools*, U.S. NEWS (Sept. 1, 2021, 9:56 AM) ("Among the 189 law schools that provided minority enrollment statistics to U.S. News, the average percentage of minority students was 28.5% in fall 2020."); Stephanie Francis Ward, *How Many Tenured Law Professors are Black? Public Data Does Not Say*, ABA J. (Oct. 28, 2020, 2:35 PM) ("For the 2019 reports, there were 9,494 full-time professors at ABA-accredited law schools, 1,987 of whom identified as minorities.") [perma.cc/28TZ-MCH6].

6. See, e.g., *The Black Authors Book Club*, ST. JOHN'S UNIV. SCH. L. (highlighting works published by Black authors through a book club led by St. John's law professors) [perma.cc/M9HR-SDZ7].

7. See Michael A. Simons, *No More Talking, What Are We Gonna Do?* ST. JOHN'S UNIV. SCH. L. (June 5, 2020) (documenting a collaborative effort from St. John's Law students, faculty, and staff to convene and commit to affirmative steps each will take to be anti-racist) [perma.cc/JHE6-YR7E]; David Pozen et al., *Updates from the Anti-Racism Steering Committee*, COLUM. L. SCH. (Mar. 31, 2021) (providing updates on the progress made to promote an anti-racist agenda at Columbia Law School) [perma.cc/D7FM-RLKE].

8. "Lynching: Legal & Dispute Resolution Responses to Violence" is a newly-developed seminar that I have co-taught with my colleague Professor Cheryl L. Wade for the past three years. See *Course Descriptions*, ST. JOHN'S UNIV. SCH. OF L. (describing courses offered at St. John's University School of Law, including Professor Greenberg and Professor Wade's seminar entitled "Lynching: Legal & Dispute Resolution Responses to Violence") [perma.cc/8MTV-L96Q]; see

diversity and anti-racist specialists who guest-lectured to faculty about the importance of diversity and inclusion.<sup>9</sup>

As part of this new-found enlightenment, deans were also urging individual law professors to rethink the role racism played as part of their course teachings and to revise their course curriculum to support this enlightened racial perspective.<sup>10</sup> For some law professors like this author, this was just a continuation of what they have always done. For others, it was a welcome opportunity to provide a more honest and balanced representation of the law. Still, others were open to the idea, but unsure how to proceed. And, a very small minority felt education about racism had no place in their law school course.<sup>11</sup>

Amidst this call for change, law school administrators and faculty became stoked with anxiety when they read about those faculty and administrators who were cancelled because their actions or teachings were deemed racist.<sup>12</sup> What if they got it wrong? What if they were cancelled? Expectedly, this fear of cancelling added a chilling effect on those professors and

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*also Race, Bias, and Advocacy*, N.Y.L. SCH. (describing Race, Bias, and Advocacy seminar course offered at New York Law School) [perma.cc/9X6J-BXMQ].

9. See, e.g., Duke University School of Law, *Race & The Law | Ian Haney López*, YOUTUBE (May 7, 2021) [perma.cc/8K5P-CJLY]; Cincinnati Law, *Building an Antiracist Law School | Teach-In on Racial Justice and the Law*, YOUTUBE (Sept. 14, 2020) [perma.cc/PRH8-LNP5]; ColumbiaLearn, *Anti-Racist Pedagogy in Action: A Columbia Faculty Panel*, YOUTUBE (Nov. 9, 2022) [perma.cc/MW4K-GM6S].

10. See, e.g., Erwin Chemerinsky et al., *Joint Statement of the Deans of the University of California Law Schools About the Value of Critical Race Theory*, UCLA L. (Sept. 11, 2020) (expressing the intention of five law school deans “to defend Critical Race Theory and to speak against the attacks upon it by the President of the United States and the Office of Management and Budget,” and to acknowledge CRT’s immense value in law school education) [perma.cc/Q2QU-SYZ7].

11. See Erin C. Dallinger-Lain, *Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment*, 67 J. LEGAL EDUC. 780, 790 (2018) (recounting from a survey of law professors that avoidance is one of the most common responses to racialized interactions in law classrooms).

12. See, e.g., Kathryn Rubino, *Law School Professor Fired Over Racist Comments That Went Viral*, ABOVE THE L. (Mar. 11, 2021, 1:52 PM) (describing the firing of a Georgetown law professor after she “was caught on camera saying of a Black student in a negotiations class she teaches . . . that ‘a lot of my lower ones [students] are Blacks.’”) [perma.cc/VT7F-VZ3T].

administrators who otherwise would be receptive to providing a more honest representation of race in their courses.<sup>13</sup>

In this paper, cancelling refers to the public shaming and professional degradation of professors who are deemed “racist,” because one or more of their teaching attempts about racism was interpreted to be racist by one or more students despite the fact these professors have demonstrated their commitment to anti-racism.<sup>14</sup> From a student’s perspective, cancelling provides an empowering voice to draw attention to their long-denied cries about racism’s prevalence in legal education.<sup>15</sup> Cancelling circumvents all due process protections that are fundamental to our legal system, and instead weaponizes social media to act as the court of public opinion.<sup>16</sup> Cancelling, like its counterparts blacklisting, threatening, attacking, and censoring, all publicly disparage those whose teachings have been stamped racist without

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13. See, e.g., Ilya Shapiro, *Why I Quit Georgetown*, WALL ST. J. (describing a professor’s concerns that “[a]ll sorts of comments that someone could find offensive would subject me to disciplinary action”) [perma.cc/2TPX-DHS5].

14. See Emily A. Vogels et al., *Americans and ‘Cancel Culture’: Where Some See Calls for Accountability, Others See Censorship, Punishment*, PEW RESEARCH CTR (May 19, 2021) (detailing the split between different Americans’ understanding of cancel culture) [perma.cc/F2RR-5NK6]; Aja Romano, *The Second Wave of Cancel Culture*, VOX (May 5, 2021, 1:00 PM) (explaining the origin of cancel culture and its expanded evolution) [perma.cc/8DDB-PPVR]; Anne Applebaum, *The New Puritans*, THE ATL. (Aug. 31, 2021) (discussing how there may be multiple interpretations, not just an interpretation of offense, of the statement that triggered the cancelling; yet, the mob psychology that motivates cancelling may have lifelong consequences for the victim of cancelling) [perma.cc/965J-25P3]; see also David Marchese, *Nikki Giovanni Has Made Peace with Her Hate*, N.Y. TIMES MAG. (Dec. 26, 2021) (commenting on how her students are afraid of talking about race and critiquing the negative consequences of keeping certain words out of the classroom) [perma.cc/MTN3-G7E5].

15. See Renee Nicole Allen, *From Academic Freedom to Cancel Culture: Silencing Black Women in the Legal Academy*, 68 UCLA L. REV. 364, 370 (2021) (“For Black students and other students of color, cancel culture is agency.”); see also Catherine Thorbecke & Benjamin Siu, *Georgetown Law Professor Terminated After Remarks About Black Students*, ABC NEWS (Mar. 12, 2021, 1:26 PM) (describing a Georgetown Law professor’s resignation for her racist comments) [perma.cc/U4W3-EGR9].

16. See Robert Shibley, *One Georgetown Law Professor Fired, One Resigns after Conversation about Black Students’ Academic Performance Accidentally Recorded*, FOUND. INDIVIDUAL RTS. & EXPRESSION (Mar. 18, 2021) (discussing how two professors at private law school Georgetown University Law Center were unfairly punished according to Georgetown’s own rules) [perma.cc/7C6S-5TK9].



first having a meaningful conversation and understanding about the incident in question.<sup>17</sup> The fear of cancelling has a chilling effect on those professors who otherwise believe that legal education should expose law students to the marketplace of ideas about whether the law has perpetuated racism so that students are better prepared to address the realities of racism in the law.<sup>18</sup> How did these public attacks rob the professors', law schools, faculties, and students of an opportunity to learn more about individuals' different reactions to racism, and how to educate more effectively about racism?<sup>19</sup>

For law schools and their individual professors, the stakes are high to get it right. Get it wrong, and law schools will suffer immediate consequences—prospective law students will migrate to those schools with greater educational integrity about racism in the law, and the school's ranking will tumble. Get it wrong, and law schools will perpetuate the status quo replete with false narratives about racism and the law and continue to graduate students who are ill-prepared to manage the systemic racism that they and their clients will experience. Get it wrong, and individual professors risk getting cancelled.<sup>20</sup>

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17. See, e.g., Philip Hamburger, Opinion, *Intolerant Lawyers Shouldn't be Judges*, WALL ST. J. (Feb. 9, 2022, 12:22 PM) (recommending that intolerance while working in legal academia be disqualifying for serving as a judge) [perma.cc/YUU2-27KJ].

18. See Randall L. Kennedy & Eugene Volokh, *The New Taboo: Quoting Epithets in the Classroom and Beyond*, 49 CAP. U. L. REV. 1, 1–11 (2021) (listing instances of backlash against professors who directly quote derogatory language from original sources in legal education and advocating for the importance of being able to “grapple with unredacted facts”).

19. See Anne Applebaum, *The New Puritans*, THE ATL. (Aug. 31, 2021) (contemplating how the extrajudicial nature of cancellation through shunning and censorship has blocked opportunities for further discourse) [perma.cc/2WSF-8CZJ].

20. See David Acevedo, *Tracking Cancel Culture in Higher Education*, NAT'L ASS'N SCHOLARS (Nov. 10, 2022) (noting that there have been 255 academic cancellations in the United States and Canada) [perma.cc/HF3R-LY7L]; Erum Salam, *US Law Professor Condemned for 'White Supremacist' Comments by Own Dean*, THE GUARDIAN (Jan. 5, 2022, 1:00 PM) (explaining how Professor Amy Wax at the University of Pennsylvania's law school was cancelled for appearing on a podcast where she stated that the influx of 'Asian elites' into the United States was problematic) [perma.cc/JA3X-QBUX]; Duke University Law School Students, Opinion, *A Plea to Disinvite Professor Alvarez*, THE CHRON. (Oct. 21, 2020, 12:00

As a dispute resolution professional, I offer a different frame to understand cancelling and discuss racism. From this perspective, I look at cancelling as a symptom that a law school doesn't have adequate processes in place to address students' concerns about a professor's perceived mishandling of race, nor do they have adequate processes in place to support professors to learn from their mistakes. From a dispute system framework

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AM) (outlining the Duke Law students' concerns with Professor Helen M. Avare's Anti-LGBTQ+ rights views and asking that she be disinvited from speaking at a Duke Federalist Society event) [perma.cc/36V-W8AG]; Christian Lubke, *Law Professor Says University Fired Her by 'Racializing' Criticism of Black Colleague's Performance*, THE COLL. FIX (Aug. 26, 2020) (recounting how Professor Diane Klein at the University of La Verne was cancelled after stating in a faculty senate meeting that she would "character assassinate" a Black assistant dean) [perma.cc/J8JQ-C435]; Erin Woo, *Law Professor Criticized After Reading Racial Slur in Class*, THE STAN. DAILY (May 30, 2020, 12:35 PM) (describing how Professor Michael McConnell at Stanford Law School was cancelled after using the N-word while reading from historical source material in class) [perma.cc/2HJ-9PKX]; Colleen Flaherty, *Bad Education*, INSIDE HIGHER ED. (Nov. 10, 2021) (explaining how Professor Jason Kilborn was cancelled after he used "n\_\_\_\_" and "b\_\_\_\_," profane expressions for African Americans and women in an exam question) [perma.cc/R25B-JMFY]; Catherine Thorbecke & Benjamin Siu, *Georgetown Law Professor Terminated After Remarks About Black Students*, ABC NEWS (Mar. 12, 2021, 1:26 PM) (articulating how Georgetown Law professor Sandra Sellers was cancelled after a viral video of her telling a colleague that every semester she anticipates that her lowest performing students will be Black) [perma.cc/T8Q9-4BSW]; Lauren Lumpkin, *Second Georgetown Law Professor Leaves in Midst of Investigation Over Conversation about Black Students*, WASH. POST (Mar. 12, 2021, 5:38 PM) (discussing how Georgetown Law professor David Batson received criticism for failing to condemn the comments about Black students made by his colleague Sandra Sellers) [perma.cc/5X3M-V3L2]; Karen Sloan, *Slaveholder Comment Roiled CUNY Law for Months Prior to Dean's Mea Culpa*, N.Y.L.J. (Mar. 23, 2021, 12:27 PM) (describing how the former Dean of CUNY Law Mary Lu Bilek cancelled herself after referring to herself as a slaveholder during a faculty meeting) [perma.cc/C7KH-JTG3]; Charles Toutant, *Suit: Princeton Professor was Victim of 'Cancel Culture' Because of His Views on Race*, N.J.L.J. (Mar. 9, 2021, 10:18 AM) (discussing how a Princeton University professor was cancelled after a public disagreement with colleagues in a dialogue on race) [perma.cc/KFP4-QU73]; Naomi Feinstein, *Students Express Concerns Over UM Law Professor's Twitter Account*, THE MIA. HURRICANE (Nov. 5, 2020) (explaining how University of Miami School of Law Professor Daniel Ravicher was criticized because of his pro-Trump tweets and tweets that were perceived to be anti-Black) [perma.cc/JFV8-DBDF].

perspective, cancelling is a lost opportunity for all stakeholders involved: students, professors, and administrators.<sup>21</sup>

How might law schools be sure to get it right? This paper focuses on the *human* stress that members of the law school community experience when they are confronting how to educate about racism.<sup>22</sup> Central to this discussion is an acknowledgment that while all members of the law school community might experience stress surrounding racism education, each member of the community might experience racial stress differently based on their individual physiological wiring, the race they identify with, and their life experiences surrounding racism.<sup>23</sup>

Building on the interdisciplinary research about racism,<sup>24</sup>

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21. See, e.g., Loretta Ross, *I'm a Black Feminist. I Think Call-Out Culture is Toxic*, N.Y. TIMES (Aug. 17, 2019) (promoting a call-in culture that relies on a restorative justice approach to creating a culture of understanding) [perma.cc/6TLN-SGC3].

22. See Daisy Auger-Dominguez, *Getting Over Your Fear of Talking About Diversity*, HARV. BUS. REV. (Nov. 8, 2019) (describing the stressors faced by individuals who are unsure about how to discuss racism without offending or alienating others) [perma.cc/3J2E-38TZ]. This paper does not focus on the academic freedom debate about whether racism is taught, or if it is, how it is taught. That discussion is already taking place in other arenas. See, e.g., Erin N. Winkler, *Children are Not Colorblind: How Young Children Learn Race*, INCLUSIONS.ORG 2–3 (discussing how children learn about race from society and may develop prejudices at a young age based on what society teaches them about certain racial groups).

23. In this discussion about reactions to racism, the author refers to groups of individuals who are Black, people of color, and white people. However, the reader should not misinterpret this classification to mean that members of each group are homogeneous and representative of the entire group. Rather, individual members of each group may have a differentiated response to racial stress. See Robert M. Sellers et al., *Racial Identity, Racial Discrimination, Perceived Stress, and Psychological Distress Among African American Young Adults*, 44 J. HEALTH & SOC. BEHAV. 302, 311–13 (2003) (finding variances in psychological distress within members of the same race based on their experiences and relationship with race).

24. See *Racism*, RACIAL EQUITY TOOLS (organizing various writings on different dimensions and forms of racism) [perma.cc/XHE8-JWEX].

racial stressors,<sup>25</sup> trauma pedagogy,<sup>26</sup> and the principles of restorative justice,<sup>27</sup> this paper provides a dispute process framework for law school administrators, faculty and students to help constructively manage the inherent stress and challenges of integrating racism education into legal education. The lessons learned will have broad applicability to the entire legal curriculum. This discussion shifts the conversation about teaching racism from an arms-length intellectual discussion to a more honest dialogue about the individual stressors that are evoked when we talk about racism.<sup>28</sup> The challenge of this difficult and more honest discussion is to give a voice to the different stressors about racism evoked in all members of our law school community, not just the anti-racist supporters, without diminishing the voices of racism's victims.<sup>29</sup> The goal is to respect students' and professors' individual wiring and perspectives about race and to make students effective advocates when confronting the inherent racism in legal practice.

This discussion progresses in four parts and follows the recommended progression for designing a conflict management system.<sup>30</sup> The initial steps when designing any conflict

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25. See Riana Elyse Anderson, Farzana T. Saleem & James P. Huguley, *Choosing to See the Racial Stress that Afflicts our Black Students*, 101 KAPPAN 20, 21 (2019) (discussing the impact of racial discrimination on Black students, and how educators can better recognize and help Black students) [perma.cc/YD4A-CHBB].

26. See Desirae Zingarelli-Sweet, *Keeping Up With . . . Trauma-Informed Pedagogy*, AM. LIBRARY ASS'N (June 18, 2021) (analyzing how students with trauma function in educational environments, and providing strategies for educators to better help these students) [perma.cc/E3WN-K4T2].

27. See FANIA E. DAVIS, *THE LITTLE BOOK OF RACE AND RESTORATIVE JUSTICE: BLACK LIVES, HEALING, AND U.S. SOCIAL TRANSFORMATION* 19 (2019) (discussing restorative justice – a system of criminal justice focusing on the rehabilitation of offenders through reconciliation with victims and the community – in connection to racial justice and the criminal justice system in the United States).

28. See, e.g., Margaret M. Russell, *McLaurin's Seat: The Need For Racial Inclusion in Legal Education*, 70 FORDHAM L. REV. 1825, 1828 (2002) (discussing the need for legal education to react to the lack of diversity by developing an environment of racial inclusion).

29. This discussion is a subtext of how our country is struggling to understand and constructively respond to the increasing public expressions of racism such as the January 6<sup>th</sup> insurrection.

30. See, e.g., LISA BLOMGREN AMSLER ET AL., *DISPUTE SYSTEM DESIGN: PREVENTING, MANAGING, AND RESOLVING CONFLICT* 7–21 (2020) (explaining

management system include understanding the problem and identifying the stakeholders affected by the problem.<sup>31</sup> Section One provides a developmental overview of how, beginning in childhood, individuals physiologically react to and learn to cope with the stress of racism. Herein lies the paradox about racial stressors. Some learn to respond to the anxiety of racism by becoming incentivized to become agents of change who help develop a racist-frame world.<sup>32</sup> Others, however, cope with the stress of racism with anger or avoidance.<sup>33</sup>

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Dispute System Design and how it can be implemented within companies, organizations, and other groups); NANCY H. ROGERS, ET AL., *DESIGNING SYSTEMS AND PROCESSES FOR MANAGING DISPUTES* 3–7 (2nd ed. 2018) (surveying alternate dispute resolution methods with examples); CATHY A. COSTANTINO & CHRISTINA S. MERCHANT, *DESIGNING CONFLICT MANAGEMENT SYSTEMS* 82 (Jossey-Bass ed., 1996) (offering a guide to creating and implementing conflict management systems); Carrie Menkel-Meadow, *Are There Systemic Ethics Issues in Dispute System Design? And What We Should [Not] Do About It: Lessons from International and Domestic Fronts*, 14 HARV. NEGOT. L. REV. 195, 203–05 (2009) (critiquing Dispute System Design and the potential impact of developing a code of ethics within it).

31. The first tenet in developing an effective DSD is to understand the conflict, racism, from the perspective of the stakeholders—administration, professors, and students. *See generally* MARTINEZ, BINGHAM & SMITH, *DISPUTE SYSTEM DESIGN: PREVENTING, MANAGING, AND RESOLVING CONFLICT*, (Stanford Univ. Press, 2020); NANCY H. ROGERS ET AL., *DESIGNING SYSTEMS AND PROCESSES FOR MANAGING DISPUTES* (Wolter Kluwer ed., 2013); CATHY A. COSTANTINO & CHRISTINA S. MERCHANT, *DESIGNING CONFLICT MANAGEMENT SYSTEMS*; Carrie Menkel-Meadow, *Are There Systemic Ethics Issues in Dispute System Design? And What We Should [Not] Do About It: Lessons From International and Domestic Fronts*, 14 HARV. NEGOT. L. REV. 195 (2009).

32. *See* Elan C. Hope et. al., *Relations Between Racial Stress and Critical Consciousness for Black Adolescents*, 70 J. APPLIED DEV. PSYCHOL. 1, 4 (2020) (finding that racial stress was positively correlated with a desire for social change among Black adolescents); SAMANTHA BOARDMAN, *EVERYDAY VITALITY: TURNING STRESS INTO STRENGTH* xiv (2021) (“In patient after patient, I discovered that it’s possible to find wellness within illness, happiness within grief, and strength within stress.”); WENDY SUZUKI, *GOOD ANXIETY: HARNESSING THE POWER OF THE MOST UNDERSTOOD EMOTION* 99–126 (2021) (encouraging readers to adopt an “activist mindset,” which reframes anxiety as a positive tool for self-improvement).

33. *See* Erin C. Lain, *Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment*, 67 J. LEGAL EDUC. 780, 790 (2018) (discussing avoidance as a way to deal with racism in the classroom).

Section Two continues the discussion in the law school context. This section highlights the differentiated reactions of individual professors, students, and administrators to racial stressors in law school. Not only does this discussion highlight the pedagogical opportunities to teach racism in clinical and skills courses,<sup>34</sup> it also signals the dangers of ignoring racism's presence in these experiential learning courses. Section Three culls from the discussion about racial anxiety in the first two sections and suggests a systemic design that law school administrators and individual professors might consider to teach about racism and effectively manage any concomitant racial stress. Based on restorative principles and extrapolating from the interdisciplinary research on how stress could become a positive stimulus, this section focuses on how law schools can create a supportive and psychologically safe learning culture that incentivizes understanding, not shaming, about racism. Law school administrators and committed faculty members are invited to consider how to harness the power of racial stressors and incentivize students to become change agents. In this section, I prescribe a menu of processes and accountability measures for law schools to consider when integrating racism education in their law school. Finally, Section Four concludes by emphasizing that a law school's decision to integrate racism education into their curriculum is both an organizational decision and a professor's personal decision. It communicates the school's commitment to including a more truthful narrative about the role of racism in the law and preparing their graduates to manage racism in legal practice. It also invites law professors to consider how they might educate about racial stressors in their classes.

## *II. Section One: Differentiated, Developmental Reactions and Coping Mechanisms to Stress*

From childhood on, we are all exposed to explicit and implicit racism through societal norms, media, and personal interactions

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34. See AMSLER ET AL., *supra* note 30, at 7–21 (discussing the pedagogy involved in conflict resolution and race).

in our everyday life.<sup>35</sup> During childhood, racism may determine who are our peers, how we are regarded by adults, and how we are regarded by authority figures.<sup>36</sup> Moreover, racism may influence how we regard our peers, adults, and authority figures.<sup>37</sup> Black persons and persons of color, however, are the primary targets of racism and bear most of its deleterious consequences.<sup>38</sup>

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35. See Naiqi G. Xiao et al., *Older but Not Younger Infants Associate Own-Race Faces With Happy Music and Other-Race Faces With Sad Music*, 21 DEV. SCI. 2, 8 (2018) (“Infants at 9 months looked longer at own-race faces paired with happy music and at other-race faces paired with sad music.”); Naiqi G. Xiao et al., *Infants Rely More on Gaze Cues From Own-Race Than Other-Race Adults for Learning Under Uncertainty*, 89 CHILD DEV. 229, 241 (2018)

Infants are biased to follow the social cues of own-race individuals over other-race individuals under situations of uncertainty . . . Although differential reliance on social cues of own-race versus other-race adults in uncertain contexts may be adaptive for early socialization and learning, it may also be a source of the emergence and development of racial biases in early childhood and beyond.

Stephen M. Quintana & Clark McKown, *Introduction: Race, Racism, and the Developing Child*, in HANDBOOK OF RACE, RACISM AND THE DEVELOPING CHILD 1–14 (2008) (examining how children acquire racial attitudes and how racism impacts their development); Riana E. Anderson & Howard C. Stevenson, *RECASTing Racial Stress and Trauma: Theorizing the Healing Potential of Racial Socialization in Families*, 74 AM. PSYCH. 63, 63–75 (2019) (proposing a new clinical coping model for systemic and interpersonal racial encounters during childhood); Steven O. Roberts & Michael T. Rizzo, *The Psychology of American Racism*, 76 AMERICAN PSYCH. 475, 475–487 (2021) (outlining seven factors contributing to American racism based on interdisciplinary research); Kristen Weir, *Raising Anti-Racist Children*, 52 AM. PSYCH. ASS’N 4 (2021) [perma.cc/ZN8Y-JUTA].

As children grow and learn, messages about race come from all corners: news media and entertainment, teachers and peers, community interactions, and, of course, families. All children, including White children, learn about race through a process known as racial-ethnic socialization, and scholars say that addressing socialization more purposefully will be necessary for dismantling racism.

36. See, e.g., Quintana, *supra* note 35, at 6 (“Race will determine how a child is perceived by others, including peers, but also by authority such as police and teachers.”).

37. *Id.* at 6–7 (describing how children internalize racism that they witness, giving the example of children watching the police mistreating their father).

38. See *Impact of Racism on Our Nation’s Health*, CTRS. DISEASE CONTROL & PREVENTION (last updated Apr. 8, 2021) (“Across the country, racial and ethnic minority populations experience higher rates of poor health and disease in a

This section discusses how racism, in all its pernicious forms, exacts a physiological and psychological toll on affected individuals beginning in childhood and explains the different coping mechanisms individuals develop to respond to their experience of racial stress. The ability to manage different types of stress, such as racial stress, is a core life function that begins in childhood and continues throughout life.<sup>39</sup> Beginning in infancy, we learn to cope with the stress in our lives. Each person, however, responds differently to racial stress. These different responses can be caused by both our innate resilience to stress and our life history with stress.<sup>40</sup> Whether an individual perceives racial stressors as a motivator or an inhibitor is a nuanced and individual reaction based on the *type of stress*, the *degree of stress*, that *individual's resilience*, their *life history with stress*, and whether they have any supportive mediators to mitigate the physiological effects of racial stress.<sup>41</sup> As the section highlights, that is where the paradox emerges. Some cope with racial stress with an immobilizing anger, while other experience their racial stress as an incentivizer, motivating them to create needed reform in our racist world.<sup>42</sup> And, this is a contributor to high anxiety when discussing racism, the law, and legal education.

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range of health conditions, including diabetes, hypertension, obesity, asthma, and heart disease, when compared to their White counterparts.”) [perma.cc/EK7A-MPYX]; Elizabeth Hinton et al., *An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System*, VERA INST. JUST. (May 2018), (reporting on how racism contributes to the disparate number of Black Americans in the criminal justice system) [perma.cc/FG5C-FCKH].

39. See *Toxic Stress*, HARV. U. CTR. DEVELOPING CHILD (explaining the varied causes and significant consequences of toxic stress) [perma.cc/GYN2-9T2P].

40. See Bruce S. McEwen, *Protective and Damaging Effects of Stress Mediators*, 338 NEW ENG. J. MED. 171, 171 (1998) (noting that different life events, both major and everyday occurrences, can cause stress).

41. See *id.* at 171 (arguing that things like genetics, perceptions of stress, and physical health all impact an individual's stress response).

42. See Michèle Lamont, *Responses to Racism, Health, and Social Inclusion as a Dimension of Successful Societies*, in SUCCESSFUL SOCIETIES: HOW INSTITUTIONS AND CULTURE AFFECT HEALTH 151, 151–69 (Peter A. Hall & Michèle Lamont eds., 2012).



*A. Racial Stress Is a Toxic Stress*

Racism is a type of toxic stress.<sup>43</sup> As the name suggests, toxic stress is chronic and prolonged stress that does not have the benefit of being mediated by a supportive caregiver. Victims of toxic stress experience sustained and intense stressors such as in abuse. The body responds to toxic stress by being in a heightened state of anxiety. Over the long haul, the brain architecture of the pre-frontal cortex becomes overloaded and is rendered unable to moderate stress levels. Research has shown that supportive adult relationships can help mitigate the long-term consequences of toxic stress.<sup>44</sup>

Emerging research shows that racism creates stress not only for the target of the racism, but also for those bystanders who observe the racism hurled at their family, friends, caregivers, or other strangers.<sup>45</sup> This second-hand exposure to racism is known

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43. See, e.g., *How Racism Can Affect Child Development*, HARV. U. CTR. DEVELOPING CHILD (explaining the effects of racism on development) [perma.cc/BLC2-RUVW]; There are three types of stress: positive, tolerable, and toxic. First, positive stress is a normal part of everyday development in which everyday occurrences create mildly elevated heart rate and hormonal levels for short periods of time. Whether an infant is learning to manage the stress of not finding their pacifier, the stress of having the caregiver be temporarily out of sight, or the stress of receiving an inoculation, the stress is short-lived and usually mediated by the caring and support of a comforting caregiver. Over time, children learn through their experience with positive stress how to self-regulate stress and strengthen their executive functioning when stressful situations inevitably arise again.

Another type of stress, tolerable stress, is distinguishable from positive stress. Tolerable stress is caused by more serious stressors such as the loss of a loved one, a long-lasting injury or a year spent quarantining from Covid. The body responds to the greater intensity and prolonged duration of stress by having a more sustained elevated heart rate and increased hormonal levels. As with positive stress, a supportive caregiver can help mediate the effects of tolerable stress and help the body restore to a more stable equilibrium. See *Toxic Stress*, HARV. U. CTR. DEVELOPING CHILD [perma.cc/GYN2-9T2P].

44. See *Toxic Stress*, *supra* note 43 (“Research also indicates that supportive, responsive relationships with caring adults as early in life as possible can prevent or reverse the damaging effects of toxic stress response.”).

45. See N.J. Heard-Garris et al., *Transmitting Trauma: A Systemic Review of Vicarious Racism and Child Health*, 199 SOC. SCI. & MED. 230, 231 (2018) (explaining that children can be adversely affected by racism they are indirectly exposed to from family, friends, and strangers); Maria Trent et al., *The Impact of Racism on Child and Adolescent Health*, 144 PEDIATRICS 1, 1 (2019) (“Racism is a

as *vicarious racism*.<sup>46</sup> Researchers Heard-Garris, Cale, Camaj, Hamati and Dominguez prescribed broadening the definition of vicarious racism and the means by which it is transmitted:

We recommend defining vicarious racism as the secondhand exposure to the racial discrimination and/or prejudice directed at another individual. Exposure to vicarious racism is irrespective of the race of the indirect target. In order for an exposure to be considered vicarious, the unintended victim must be cognizant of someone else experiencing racism . . . . The event would be more distressing if the unintended victim identifies with the individual experiencing racism. The unintended victim may relate to the direct target on the basis of ethnicity, age, gender, geographic proximity or nationality . . . .<sup>47</sup>

Vicarious racism can encompass a spectrum of exposure modalities” in-person witnessing an event, reading about or observing an event (e.g. online, through social media, traditional media); and hearing about an event through a family member, friend, peer, news or other source. Vicarious racism may transmit trauma in children as they can imagine themselves or a loved one in place of the target and thus suffer emotional, psychological, or physiological consequences.<sup>48</sup>

If a child witnesses racism towards others, that vicarious racism could create chronic stress and depression for the witness.<sup>49</sup>

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social determinant of health that has a profound impact on the health status of children, adolescents, emerging adults, and their families.”).

46. See N.J. Heard-Garris et al., *supra* note 45, at 230 (defining vicarious racism as “secondhand exposure to racism . . .”).

47. *Id.* at 235.

48. *Id.* at 236.

49. See *id.* (explaining that “children may also feel emotional pain due to the maltreatment of a relative, friend or stranger.”); Trent et al., *supra* note 45, at 2 (outlining the impact of racism on childrens’ mental health); Lisa McCann & Laurie A. Pearlman, *Vicarious Traumatization: A Framework for Understanding the Psychological Effects of Working with Victims*, 3 J. TRAUMATIC STRESS 131, 135

The witness, not only the direct target, may begin to view the world as unsafe, engender a hypersensitivity about racism, and feel helpless to change it.<sup>50</sup> If the target of the racism is the witnesses' caregiver, the racism may also create a tension in the caregiver-witness relationship.<sup>51</sup> For example, there may be stricter parenting rules.<sup>52</sup> Moreover, the tension in the caregiver-witness relationship might also adversely influence the witnesses' racial socialization.<sup>53</sup>

As the targets of racism, children and adolescents have been found to experience chronic exposure to stress hormones.<sup>54</sup> Such chronic exposure to elevated hormone levels has been found to cause children and adolescents to have such health inequities as increased vulnerability to chronic disease.<sup>55</sup> When we experience racial stress, or any other type of stress, our body reacts.<sup>56</sup> Our autonomic system, hypothalamic-pituitary-adrenal ("HPA") axis, cardiovascular system, metabolic system, and immune system are all called into action to help maintain our body's balance.<sup>57</sup> Our heart rate increases as hormonal levels of adrenaline and cortisol

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(1990) (explaining how children of Nazi camp survivors and Vietnam Veterans experience secondary victimization).

50. See Heard-Garris et al., *supra* note 45, at 231 ("Vicarious racism experiences threaten a child's sense of the world as just, fair, and safe, fostering feelings of helplessness and despair, which may hold consequences for their mental and physical health.").

51. See *id.* ("Racial discrimination experiences of caregivers may lead to strain on the parent-child relationship.").

52. See *id.* ("Racial discrimination experiences of caregivers may lead to . . . harsher parenting practices.").

53. See *id.* (stating that caregivers' racial discrimination experiences may adversely affect racial socialization).

54. See Trent et al., *supra* note 45, at 2 ("The biological mechanism that emerges from chronic stress leads to increased and prolonged levels of exposure to stress hormones.").

55. See *id.* at 2 ("Prolonged exposure to stress hormones, such as cortisol, leads to inflammatory reactions that predispose individuals to chronic disease.").

56. See Bruce S. McEwen, *Protective and Damaging Effects of Stress Mediators: Central Role of the Brain*, 8 DIALOGUES CLINICAL NEUROSCIENCE 367, 367 (2006) ("Stress is a condition of the mind-body interaction, and a factor in the expression of disease that differs among individuals. It is not just the dramatic stressful events that exact their toll, but rather the many events of daily life . . .").

57. See generally *id.* (describing how stress affects the body's systems).

increase. At the same time, our pre-frontal cortex wiring, the executive function of the brain, also responds through its network of neurons to manage that stress.

*Allostatis* refers to the ability of the human body to maintain the body's physiological equilibrium when it is undergoing change.<sup>58</sup> In some types of stressors, our body returns to its normal physiological levels once the stressor is removed.<sup>59</sup> However, in more sustained types of stressors such as racism, our body maintains its heightened physiological response, and over time, that causes health problems.<sup>60</sup> Furthermore, when allostatis is overused, this regulatory mechanism may become worn out, which results in allostatic load.<sup>61</sup> Thus, allostatic load may be caused by frequent stress,<sup>62</sup> prolonged exposure to stressors of the same type,<sup>63</sup> the inability to stop the allostatic response once after the stressor ends,<sup>64</sup> and the overcompensation of one of the allostatic systems after another system failed to respond to the stressor.<sup>65</sup> Studies of allostatic loads can deepen our understanding of how stress risk factors such as race are disparately impacted across types of employment and health consequences.<sup>66</sup> Another consequence of direct exposure to racism is that the recipient may internalize this racism. This internalization of racist beliefs is

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58. *Id.* at 368.

59. *See id.* (stating that “allostasis” refers to “the active process by which the body responds to daily events and maintains homeostasis”).

60. *See id.* (“[C]hronically increased allostasis can lead to disease . . .”).

61. *See id.* (explaining that “allostatic load” refers to the “wear and tear that results from either too much stress or from inefficient management of allostasis, e.g. not turning off the response when it is no longer needed”).

62. *See id.* at 368–69 (illustrating the four types of allostatic load).

63. *See id.* at 368 (defining the type of stress as “prolonged response due to delayed shut down”).

64. *See id.* (“[I]nadequate response that leads to compensatory hyperactivity of other mediators.”).

65. *Id.* at 373.

66. *See generally* O. Kenrik Duru et al., *Allostatic Load Burden and Racial Disparities in Mortality*, 104 J. NAT'L MEDICAL ASS'N 89 (2012) (describing how allostatic load burden partially explains mortality rate discrepancies in white and black populations).

known as *stereotype threat*.<sup>67</sup> Stereotype threat can erode children's and adolescent's sense of competency and undermine their academic performance.<sup>68</sup>

### B. *The Anxiety of Racism Can Be Managed*

Although individuals may have little control over the stress they confront, individuals can develop control over how they react to that stress.<sup>69</sup> Moreover, individuals can learn to develop stress-management skills throughout life.<sup>70</sup> For example, *developing an awareness of one's triggers, practicing to respond in a different way to stress-producing situations, modeling a respected person's alternative responses to stressors, keeping focused on your larger goal, and incrementally building on your stress-management skills* are all ways to help develop constructive responses to stress.<sup>71</sup> And, as mentioned above, *supportive adult relationships are helpful stress buffers*.<sup>72</sup>

How an adolescent copes with stress and which coping mechanism an adolescent uses to cope is based, in large part, on the adolescent's subjective appraisal of whether or not the stressor will affect their well-being.<sup>73</sup> There are three types of stressor

67. Trent et al., *supra* note 45, at 4; C.M. Steele & I. Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans*, 95 J. PERSONALITY & SOC. PSYCH. 797 (1995).

68. Trent et al., *supra* note 45, at 4.

69. See *Building the Skills Adults Need for Life: A Guide for Practitioners*, HARV. U. CTR. DEVELOPING CHILD (detailing a guide for practitioners in how to teach adults to develop necessary life skills) [perma.cc/7DDU-J2SQ]; see also Melanie J. Zimmer-Gembeck & Ellen A. Skinner, *Adolescents Coping with Stress: Development and Diversity*, 15 PREVENTION RESEARCHER 3, 3 (2008) ("Approximately 25% of adolescents will experience at least one significant stressor, including the death of a loved one or witnessing a traumatic event.").

70. See *Building the Skills Adults Need for Life: A Guide for Practitioners*, *supra* note 69.

71. *Id.*

72. See *Toxic Stress*, *supra* note 43 (explaining the cumulative toll that continual and multiple sources of stress can have on an individual's physical and mental health).

73. See Melanie J. Zimmer-Gembeck & Ellen A. Skinner, *Adolescents Coping with Stress: Development and Diversity*, 15 PREVENTION RESEARCHER 3, 3 (2008) (noting that the outcome of stressful events will have either positive or negative

appraisals: an *appraisal of loss*, an *appraisal of threat*, or an *appraisal of challenge*.<sup>74</sup> The type of appraisal affects the coping response.<sup>75</sup> For example, an appraisal of loss refers to a harm that has taken place, compared to an appraisal of threat which refers to an anticipated harm or threat. These types of appraisals are likely to rely on the coping mechanisms of escape, withdrawal or support seeking.<sup>76</sup> A distinctly different type of stress appraisal, an appraisal of challenge, is likely to pique the individual's interest and incentivize them to rely more on problem-solving as a coping mechanism.<sup>77</sup> Problem-solving as a stressor coping skill tends to be used with those with higher competence and mental health.<sup>78</sup> We can appreciate how those individuals who experience stress as an appraisal of challenge and have learned to develop problem-solving skills to cope with that stress, can also go forward and apply those problem-solving skills to manage the stress of law school.

### *C. Black Adolescents Cope with Racial Stress with Critical Consciousness*

For some Black adolescents who continue onto law school, the very coping mechanisms that have helped them manage racial stress in adolescence will also be a welcome resource to manage the inevitable racial stress they will confront when they become lawyers.<sup>79</sup> "Critical consciousness" is the general term used to

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impacts on adolescents, and that this is dependent on how the adolescent responds).

74. *Id.* at 3 ("Appraisal of loss implies a harm that has already transpired, whereas appraisal of threat implies an anticipation of harm in the future. An appraisal of challenge identifies a stressful event that can potentially result in some positive outcome.").

75. *Id.*

76. *Id.* at 4.

77. *Id.* at 3.

78. *Id.* at 4.

79. See, e.g., Gareth Evans, *How Ben Crump Became America's Go-To Police Brutality Lawyer*, BBC (May 30, 2021) (explaining that by growing up in North Carolina and Florida, Ben Crump observed the inequality between Blacks and Whites; this stark inequality incentivized Crump to become a lawyer to effectuate change) [perma.cc/2MQK-L4RS].

describe the coping mechanisms Black individuals used to cope and respond to race-related stress.<sup>80</sup> Critical consciousness is comprised of three coping mechanisms: *critical action, critical reflection and critical agency*.<sup>81</sup>

In a study of 594 Black male and female adolescents between the ages of thirteen and eighteen, the adolescents reported that they coped with their different experiences of racism by engaging in critical action, critical reflection, or critical agency.<sup>82</sup> This study explored the adolescents' coping mechanisms when racism emanated from individuals, institutions, and culture.<sup>83</sup> Critical action refers to "an act of resistance to change the very conditions that sustain racial oppression."<sup>84</sup> It's all about changing systems that support systemic racism.<sup>85</sup> The Black Lives Matter Movement is one current example of critical action.<sup>86</sup> Critical reflection is a coping mechanism that involves an understanding of how organization works to perpetuate racism.<sup>87</sup> This coping

80. See Elan C. Hope et al., *Relations Between Racial Stress and Critical Consciousness for Black Adolescents*, 70 J. APPLIED DEV. PSYCH. 4 (2020) (explaining the reality of critical consciousness and suggesting practitioners consider creating spaces for Black youth to discuss their experiences of racism).

81. See *id.* at 1.

82. See *id.* at 4 (explaining that the population studied involved a cross-section of participants from all over the country and from homes with incomes ranging from under \$35,000 to over \$100,000 per year and demonstrated the differential responses to racism: critical reflection, critical action and critical agency).

83. See *id.* at 1 ("[W]e used structural equation modeling to examine how stress from individual, institutional, and cultural racism may directly and indirectly relate to critical reflection, critical agency, and critical action for Black adolescents.").

84. See *id.* ("We contend that, for Black adolescents, experiences of stress from racism may relate to critical reflection of racial oppression, and thus promote critical agency, and critical action to dismantle systems of racial oppression.").

85. See *id.* at 3 ("For institutional and cultural forms of racism, Black youth may be motivated to engage in systemic change after engaging in a deep analysis of how systems of racial inequality are embedded in society.").

86. See *id.* at 1 ("For Black adolescents, one theorized response to racism is to engage in critical action as an act of self-preservation to mitigate the negative effects of stress caused by racial oppression and as an act of resistance to change the very conditions that sustain racial oppression.").

87. See *id.* at 2 ("Through critical reflection, youth have an opportunity to analyze the social and political conditions within their environment, especially

mechanism, like the coping mechanism critical action, is usually triggered by the Black adolescent's personal or vicarious experiences with racism.<sup>88</sup> Critical reflection helps a Black adolescent make sense of why they were passed up for a summer job that was filled by a white counterpart with inferior credentials. Critical agency is a coping mechanism that connects the racially stressed person with their own ability to effectuate change.<sup>89</sup> Empowerment. Critical agency taps into to the Black adolescent's own power to create a more equal and equitable society.

As with all of life, the participants' personal experiences with racism influenced their view on whether developing a more racially equitable world was an attainable goal. For example, those participants who experienced more institutional racism were less likely to believe that equality was an attainable goal.<sup>90</sup> The study also implicates how the racial stressors and resulting coping mechanisms developed by Black participants may prepare them to be effective social justice lawyers.<sup>91</sup>

*D. RECAST: A Program for Developing Racial Literacy and  
Coping Mechanisms During Racial Encounters for Youths and  
Adults of Color*

Dr. Howard C. Stevenson, a psychologist, offers a program of racial literacy, RECAST (Racial Encounter Coping Appraisal and Socialization Theory), to help Black individuals and people of color develop coping mechanisms for racial stress and trauma. This framework taps into the sense of agency of youths and adults who

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conditions that may inhibit civic participation, education opportunities, and economic advancement.”).

88. *See id.* at 2 (“Indeed, for Black youth, critical reflection and critical action can stem from personal and vicarious experiences of racism.”).

89. *See id.* at 1 (defining critical agency as the belief in one's ability to affect change toward social justice).

90. *Id.* at 8 (“Youth who experienced more institutional racism reported more beliefs in social inequalities, but less beliefs that group equality is an attainable or desirable goal.”).

91. *See id.* (“It is possible that as Black youth grapple with the reality and consequences of cultural racism, distal racial stressors that manifest as structural inequities, they more firmly believe that society should operate differently.”).



are Black and people of color and helps them respond to the stress of racial discrimination in a more mindful and constructive way.<sup>92</sup> As Dr. Stevenson explains, the incendiary acts of racial discrimination usually last less than two minutes, often leaving little opportunity for thoughtful deliberation about the best way to proceed. Drawing on the neuroscience literature, Dr. Stevenson discusses how, when someone is engaged in a racial encounter, their brain shuts down within sixty seconds, and, instead, the other person appears larger and more dangerous than they actually are.<sup>93</sup>

According to RECAST, the individual first *reads* the racial moment they are reacting to and becomes mindful of how they are reacting.<sup>94</sup> Then, the individual *recasts* what they are experiencing from a huge, out-of-control happening to a manageable event.<sup>95</sup> Once the individual reads and recasts the racial encounter, they then *resolve* the encounter by making a healthy, centered decision about how to proceed.<sup>96</sup> Dr. Steven prescribes implementing the RECAST racial literacy program by *calculating, locating, communicating and breathing and exhaling*.<sup>97</sup> Please take note that Dr. Stevenson's work on coping mechanisms for racial stress and trauma is designed to address the reoccurring forms of racism that youths and adults who are Black and people of color regularly experience.

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92. See, e.g., Riana E. Anderson & Howard C. Stevenson, *RECASTing Racial Stress and Trauma: Theorizing the Healing Potential of Racial Socialization in Families*, 74 AM. PSYCH. 63, 70 (2019) ("Presumably, such a shift to purposeful and mindful RS may relieve parents of their own emotional and psychological consequences from race-based traumatic stress.").

93. See Howard C. Stevenson, *How to Resolve Racially Stressful Situations*, TED (Nov. 2017) (explaining the science behind racist encounters) [perma.cc/MZA4-2JZW].

94. See *id.* (noting that developing requires noticing the stress reaction to a racial moment).

95. See *id.* (comparing the initial event to a tsunami and the reduced event to a mountain climb).

96. See *id.* (narrowing the goal to a happy medium between underreacting and overreacting).

97. See *id.* (describing the five-step process as a digestible teaching method).

*E. White Parents and Black Parents Have Different Conversations about Race with their Children*

A painful reality, Black parents and parents of color, as part of their parental obligations, routinely have “the talk” with their children about how to survive racism; white parents don’t because racism doesn’t target white people.<sup>98</sup> Yet, as the anti-racism movement gains allies, there is a growing call for white parents to educate their children about racism and make them aware how their “invisible privilege” of being white perpetuates racism.<sup>99</sup>

Emerging research confirms, however, that white parents don’t talk about race with their children.<sup>100</sup> What message do white

98. See generally Kristen Weir, *Raising Anti-Racist Children*, 52 AM. PSYCH. ASS’N 4 (2021) (explaining that Black families are more likely to discuss with their children how they should respond to racism).

99. See *Dear White Parents*, ONE MILLION KIDS ONE MILLION TALKS (encouraging white parents to talk to their children about racism and the “invisible” privilege it gives white children) [perma.cc/8RMX-BHKZ]; Lisa Curtiss, *Why Your Lack of Diversity is Hurting Your Business*, FORBES (Nov. 23, 2019, 11:54 AM) (explaining that a consequence of racism is a lack of diversity that perpetuates white supremacy values) [perma.cc/7XNX-6VTQ]; Joe Pinsker, *How Well-Intentioned Families Can Perpetuate Racism*, THE ATL. (Sept. 4, 2018) (considering how a lack of diversity deprives our society of different perspectives that contribute to success) [perma.cc/M26Q-QCJ9].

100. See John Nicky Sullivan et al., *Conversations about Race in Black and White US families: Before and After George Floyd’s Death*, PNAS (Sep. 13, 2021) [perma.cc/N8PK-Y8J6].

After Floyd’s death, Black parents had more frequent conversations about race and racism, were more likely to prepare their children to experience bias, and indeed, were more concerned that their children would experience bias. White parents, in contrast, remained mostly unchanged, and if anything became more likely to socialize their children toward colorblindness. Colorblindness may be a well-intentioned socialization strategy, but can backfire by reducing children’s ability to identify and combat racial inequality.

see also Sylvia Perry, *White Parents Need to Talk About Race with Younger Children, Too*, NW. INST. OF POL’Y RSCH. (May 3, 2021) [perma.cc/NUD7-GASE].

Many White parents who did not bring up race said they did so to shield their children because of their young age. Others took a more passive approach, expecting either their child to bring up the topic of race or another adult, such as a teacher, to discuss it with them. A third group did not think it was necessary to discuss racial events at all. Perry points out that around this age a majority of Black children report they have

children take away about race when its not discussed? What explicit and implicit message do children extrapolate about racism from their parents, teachers, popular media, and experience with individuals who are Black and people of color? What coping mechanisms do many white children learn that will prepare them to engage in conversations about racism? How might white children's inexperience talking about race affect their willingness to talk about racism if they then go on to become law school professors?

As will continue to be emphasized throughout this article, individuals who are Black and people of color experience racial stress and trauma regularly in their everyday lives.<sup>101</sup> Consequently, they experience racism with a heightened intensity as they navigate life. Moreover, white children, based on their individual life experiences, may or may not have learned the skills to talk about racism.

The next section will discuss how law school administrators, professors, and students, whether Black, people of color, or white, come to law school with their own life lessons and coping mechanism about racism.

### *III. Section Two: Racial Stress in Law School*

This section will discuss how the law school environment is a petri dish that exacerbates the differential racial stressors already present in students, professors and administrators, and in some instances, creates new racial stressors. Legal education's racist history and the inclusion or absence of racism pedagogy are potential racial stressors.<sup>102</sup> Thus, even though law school is an

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already had an experience of discrimination, often perpetuated by a White peer.

101. See, e.g., Lorenzo Ferrigno & Rob Frehse, *James Blake Case: Board Finds Excessive Force Was Used*, CNN (Oct. 7, 2015, 8:08 PM) (showcases the example of the use of excessive force against tennis star James Blake) [perma.cc/8MXW-EFNL].

102. See, e.g., Kimberlé Williams Crenshaw, *Toward A Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L.J. 1, 2 (1988) (discussing how legal education is "perspectivelessness" by narrowly focusing on the white dominant perspective as the objective stance and marginalizing the value of other racial perspectives).

inherently stressful environment for all members of the law school community,<sup>103</sup> it is particularly stressful for students, faculty and administrators of color.<sup>104</sup>

In this section, I will highlight some of the racial stressors that are activated in law school: racial battle fatigue,<sup>105</sup> stereotype threat,<sup>106</sup> racial backlash,<sup>107</sup> white fatigue,<sup>108</sup> cognitive

103. See Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL'Y, L., & ETHICS 357, 358–59 (2009) (discussing the prevalence of stress among law students); Debra S. Austin, *Positive Legal Education: Flourishing Law Students and Thriving Law Schools*, 77 MARYLAND. L. REV. 649, 650 (2018) (“Law students start law school with strong mental health and high life satisfaction measures, and within the first year of law school, experience a significant increase in anxiety and depression.”); Erin C. Dallinger-Lain, *Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment*, 67 J. LEGAL EDUC. 780, 790 (2018) (describing the stress that professors have during discussions about race).

104. See, e.g., MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* 40–54 (2019) (discussing the many ways the intersectionality of race and gender cause Black law professors to be subjected to discriminatory treatment). The legal profession is not diversified. In 2011, only 11.7% of the lawyers were lawyers of color. In 2021, only 14.6% of the lawyers were lawyers of color. See A.B.A., *2021 PROFILE OF THE LEGAL PROFESSION (2021)* (showing the lack of diversity in the legal profession since only 14.6% of lawyers in 2021 were lawyers of color) [perma.cc/63JE-8YKQ].

105. See Tammie Jenkins, *Black. Woman. Nontraditional Other: Creating Hybrid Spaces in Higher Education*, in *RACIAL BATTLE FATIGUE IN HIGHER EDUCATION: EXPOSING THE MYTH OF POST-RACIAL AMERICA* 37 (Kenneth J. Fasching-Verner et al., eds., 2015) (“Racial battle fatigue describes an interdisciplinary conceptual framework for exploring the psychological and social effects of racism on people of color attending predominantly white institutions of higher learning.”).

106. See Claude M. Steele & Joshua Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans*, 95 J. PERSONALITY & SOC. PSYCH. 797, 797 (1995) (describing a stereotype threat as a social-psychological dilemma that forms from widely-known negative stereotype about one’s group).

107. See, e.g., William A. Smith et al., *‘You Make Me Wanna Holler and Throw up Both My Hands!’: Campus Culture, Black Misandric Microaggressions, and Racial Battle Fatigue*, 29 INT’L J. QUALITATIVE STUD. IN EDUC. 1189, 1190–95 (2016) (highlighting gendered racial microaggressions and campus racial climates experienced by students at institutions of higher learning).

108. See Joseph E. Flynn, Jr., *White Fatigue: Naming the Challenge in Moving from an Individual to a Systemic Understanding of Racism*, 17 MULTICULTURAL PERSPECTIVES 115, 115 (2015) (“White fatigue occurs for White students who have grown tired of learning and discussing race and racism, despite an understanding of the moral imperative of anti-racist and anti-oppressive practices.”).

dissonance,<sup>109</sup> fear of saying the wrong thing,<sup>110</sup> and vicarious trauma.<sup>111</sup> I will explain how law students, based on their previous experiences with racism, may react differently to racial stressors, and why doctrinal, skills, and clinic courses might activate different racial stressors in law students.<sup>112</sup> That is where the paradox of racial stress emerges. Some may find their racial stress incentivizes their learning and even empowers them to become agents of change;<sup>113</sup> others respond to racial stress with anger and inertia, convinced that racial equity is just a pipe dream.<sup>114</sup> The challenge for law professors is how to develop the skills and constructive coping mechanisms to help manage their own racial stress as well as their students' racial stress when talking about racism. Cancelling is one consequence of failing to talk about racism or getting it wrong. When reading this section, please note

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109. See Kirsten Heitland & Gerd Bohner, *Reducing Prejudice via Cognitive Dissonance: Individual Differences in Preference for Consistency Moderate the Effects of Counter-Attitudinal Advocacy*, 5 SOC. INFLUENCE 164, 165 (2009) (explaining that the idea behind the theory of cognitive dissonance is that “cognitions lead to the arousal of dissonance if they are psychologically or logically inconsistent with other cognitions”); see also SHERRILYN A. IFILL, *ON THE COURTHOUSE LAWN: CONFRONTING THE LEGACY OF LYNCHING IN THE TWENTY-FIRST CENTURY* 142 (2007) (describing how witnessing a lynching ended a friendship between a Black and white child as each child coped differently with what they had seen).

110. See, e.g., Daisy Auger-Dominguez, *Getting Over Your Fear of Talking About Diversity*, HARV. BUS. REV. (Nov. 8, 2019) (discussing the fear business leaders experience when talking about diversity and how best to overcome this fear) [perma.cc/CEF3-XN78].

111. See Lisa McCann & Laurie Anne Pearlman, *Vicarious Traumatization: A Framework for Understanding the Psychological Effects of Working with Victims*, 3 J. TRAUMATIC STRESS 131, 133 (1990) (introducing vicarious traumatization as a process that may cause mental health professionals to experience psychological effects after working with traumatized clients).

112. Some of the racial stressors discussed such as stereotype threat have evolved to also have colloquial meanings that are broader than those used in this paper. The stressors discussed throughout this paper should be interpreted through the scientific definition of stressors as highlighted in Section One.

113. See, e.g., Elan C. Hope et al., *Relations Between Racial Stress and Critical Consciousness for Black Adolescents*, 70 J. APPLIED DEV. PSYCHOL. 1, 2 (2020) (describing black adolescents' different responses to racism which motivate Black youths to participate and transform civil and political society).

114. See *id.* at 8 (explaining that for some adolescents the idea of an egalitarian society appears futile due to continuous experiences of inequality and individual racism).

the irony in this discussion. Racism education is absent from much of legal education even though law schools have been encouraged to educate their students about the skills and values students need to become practice-ready lawyers where racism is ever-present.<sup>115</sup>

*A. Legal Education Is Sullied by its Racist History*

The legal profession has a racist history that continues to shape legal education. Black lawyers were excluded from the American Bar Association until 1943, and it wasn't until 1950 that the first Black lawyer became a member of the ABA.<sup>116</sup> Until 1943, Howard University was the only law school to admit Black students.<sup>117</sup> It wasn't until 1964 that the American Association of Law Schools (AALS) could state that all member law schools were not denying admission to applicants based on race or color.<sup>118</sup> It's no wonder that there are still so few students of color in law school. And, the increased enrollment of Black law students is still not certain. In 2019, the number of minority students who were reported to be enrolled in law schools has decreased since the data was first reported in 2015.<sup>119</sup>

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115. See E. Eugene Clark, *Legal Education and Professional Development – An Educational Continuum, Report of the Task Force on Law Schools and Profession: Narrowing the Gap*, A.B.A 10 (July 1992) (identifying “[s]triving to rid the profession of bias based on race . . . and rectify[ing] the effects of the biases” as a fundamental value that practice-ready lawyers should possess) [perma.cc/MPZ6-D62Z]; see also WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007) (highlighting the need for law schools to rethink legal education and consider a more integrated legal curriculum); Mary Lu Bilek et al., *Twenty Years After the MacCrate Report: A Review of the Current State of the Legal Education Continuum and the Challenges Facing the Academy, Bar and Judiciary*, A.B.A. (2013) (reporting on the persistent gap between legal education and practice competency) [perma.cc/YS7C-KDT4].

116. See Clark, *supra* note 115, at 23 (identifying Howard University as the only substantial source of legal educations for blacks from 1877–1939).

117. *Id.*

118. *Id.*

119. A.B.A., *2019–2020 Annual Report: The Year in Review* 13 (2020) (reporting that in 2019, of the 132,696 enrolled in law school, 35,085 students identified as minorities, a slight increase of minority student enrollment reported

For some readers of this paper, it may be abhorrent and counter to their core values to realize they are members of a profession with such longstanding racism. However, it should be no surprise. After all, racism is the undergirding of our laws and legal practice.<sup>120</sup> Racism is the reason racially neutral laws are implemented to have a disparate impact on people of color.<sup>121</sup> Racism shapes dispute resolution processes to perpetuate a white privilege default.<sup>122</sup> And, the case-dialogue method, reinforces the interpretation of the law based on a white man's privilege and perspective.<sup>123</sup> Reinforcing this point, the Carnegie Report<sup>124</sup> examined legal education at sixteen schools and reported how legal education's reliance on the case-dialogue method shuts off students' "moral imagination," disregarded a student's need for social justice, and aborted the ethical and social skills needed to deal with actual practice.<sup>125</sup> Moreover, vestiges of legal education's racist structure remain: the underrepresentation of students and

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in 2018 (34,928), and a decrease in minority enrollment reported in 2015 (35,754) [perma.cc/V6GF-MZM2].

120. See *Prigg v. Pennsylvania*, 41 U.S. 539, 541 (1842); Indian Removal Act of 1830, 4 Stat. 411 (repealed 1980); *Scott v. Sandford*, 60 U.S. 393, (1857); The Dawes Act, 24 Stat. 388 (repealed 2000); The Chinese Exclusion Act, 27 Stat. 25 (repealed 1943); *Plessy v. Ferguson* 163 U.S. 537 (1896); *United States v. Shipp*, 203 U.S. 563; Exec. Order No. 9066, 7 Fed. Reg. 1407 (Feb. 19, 1942); *Korematsu v. United States*, 323 US 214 (1944); *Loving v. Virginia*, 388 U.S. 1 (1967); see also SHERRILYN A. IFILL, ON THE COURTHOUSE LAWN: CONFRONTING THE LEGACY OF LYNCHING IN THE TWENTY-FIRST CENTURY 165 (2007) (highlighting how the legal system was complicit in "creating, maintaining, and condoning" lynching); JAMES FORMAN JR., LOCKING UP OUR OWN (2017) (detailing how the policy and implementation of criminal laws were racist); RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA (2017) (explaining how laws regarding home ownership, zoning and taxes were strategically designed and implemented to perpetuate racial segregation).

121. See, e.g., *Brnovich v. Democratic Nat. Comm.*, 141 S. Ct. 2321 (2021) (upholding Arizona's voting restrictions that would have a disparate impact of people of color).

122. See, e.g., Sharon Press & Ellen E. Deason, *Mediation: Embedded Assumptions of Whiteness?*, 22 CARDOZO J. CONFLICT RESOL. 453, 459; 473 (2021) (highlighting how specific mediation intervention might reinforce white privilege and mute the voice of mediation participants of color).

123. Rob Trousdale, *White Privilege and the Case-Dialogue Method*, 1 WM. MITCHELL L. RAZA J. 39 (2010).

124. SULLIVAN ET AL., *supra* note 115.

125. *Id.* at 5–9.

faculty who are Black and people of color, observations about how race contributes to the disparate treatment of members in the law school community hierarchy, and the lack of internal consistency in the equitable treatment of members within the law school community. These inequities are all potential triggers of racial stress.

*B. Both the Absence and Inclusion of Racism Education Trigger Racial Stressors*

Ample opportunities exist to meaningfully educate about racism in all law school courses: doctrinal, skills, and clinical courses. Yet, whether or not a law professor or the law school administration decides to include racism education in their courses, students may still experience racial stress.<sup>126</sup> Caveat! A law school's failure to constructively manage the ever-present racial stress within their legal community, whether in doctrinal courses, skills courses or clinics, will make it more likely that their students will resort to cancelling as a coping mechanism when students experience racial stress within their law school courses. If a law school doesn't offer students and faculty a safe and receptive environment to talk about incidents or miscommunications that triggered their racial stress, cancelling may be the only available option. For some professors, the fear of being cancelled has had a chilling effect on their decision to even include discussions about racism in their courses.

In those law schools where discussions about racism are absent from the law school curriculum, students of color experience the silence as one more marginalization of their ongoing racist experiences.<sup>127</sup> "The silencing of racialized information is largely why the law feels alien and alienating to those for whom race or

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126. See Kimberlé W. Crenshaw, *Forward Toward A Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L. J. 1–2 (1988) (describing the racial stress experienced by minority students in law school classrooms).

127. See, e.g., NICHOLE P. DYSZLEWSKI ET AL., INTEGRATING DOCTRINE AND DIVERSITY: INCLUSION AND EQUITY IN THE LAW SCHOOL CLASSROOM 43 (2021) (explaining the role of silence around issues of race in furthering the racial stress of marginalized law students).



other identity characteristics are reality-defining and often the starting point for legal analysis.”<sup>128</sup> Furthermore, the absence of information about racism in courses perpetuates the white male dominance narrative of the law.<sup>129</sup> For many students, this status quo cannot be maintained. For example, Gen Z law students, whether Black or white, are focused on social justice and are more likely to demand that a more truthful appraisal of social justice be a part of their legal education.<sup>130</sup>

When racism is discussed in classes, however, there is still a likelihood that one or more of the students may experience these discussions as stressful or even racist.<sup>131</sup> Depending on the student, this could trigger different types of racial stress that impact learning and affect receptivity to the discussion itself. The emotions a student has about racism, however, may have either a positive or negative impact on their learning.<sup>132</sup> Although researchers confirm that emotions influence learning and memory,<sup>133</sup> there is no consensus about whether negative stress, like that caused by racism, has a positive effect on learning and memory.<sup>134</sup> Two factors appear determinant. First, whether the stressor is mild and acute, versus excessive and chronic,<sup>135</sup> and

128. See *id.* at 44 (quoting Margaret Montoya, who has written on silencing in the legal profession).

129. See *id.* (outlining the status quo of dominance by white males and the impact of this dominance in law school classrooms).

130. See Tiffany D. Atkins, #For the Culture: Generation Z and the Future of Legal Education, 26 MICH. J. RACE & L. 115, 130 (2020) (observing that Gen Z'ers believe in social activism and a majority believe in racial equality).

131. See, e.g., Colleen Flaherty, *Bad Education*, INSIDE HIGHER ED (last updated Nov. 10, 2021) (serving as an example of an exam question about race that students experienced as racist) [perma.cc/44JB-N9QV].

132. See generally WENDY SUZUKI, GOOD ANXIETY: HARNESSING THE POWER OF THE MOST UNDERSTOOD EMOTION (2021) (outlining how negative emotions such as anxiety can have positive side effects); SAMANTHA BOARDMAN, EVERYDAY VITALITY: TURNING STRESS INTO STRENGTH (2021); Chai M. Tyng et al., *The Influences of Emotion on Learning and Memory*, 8 FRONT. PSYCH. 1454, 1457 (2017).

133. See Tyng, *supra* note 132, at 1457 (finding that emotions can influence memory either positively or negatively depending on certain factors).

134. See *id.* (focusing on the impact of negative stress on memory and finding no conclusive evidence of positive effects).

135. See *id.* at 1469 (showing that the frequency of the stressor can determine whether there is a positive impact on memory).

second, the individual make-up of the person experiencing the stress.<sup>136</sup> In one study, it was reported that the negative stressors may actually facilitate learning by motivating the individual to focus more, become more curious, and hence learn more.<sup>137</sup> Arriving at the opposite conclusion, another study indicated that excessive and chronic stress of racism can actually have an adverse effect on learning and memory.<sup>138</sup> Thus, law students will manifest their stress about racism and receptivity to learning about racism based on their individual wiring and coping responses to their life experiences around race.<sup>139</sup> Some may feel energized and empowered by these discussions to finally have their experiences with racism validated.<sup>140</sup> Others will experience such discussions as an energy drain.<sup>141</sup> It depends on whether the stressor is mild and acute versus excessive and chronic,<sup>142</sup> as well as the individual make-up of the person experiencing the stress.<sup>143</sup>

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136. See *id.* at 1457 (explaining that the differences in emotional processing of stress such as personality traits, intellectual ability and sex hormones impact the influence of emotion).

137. See *id.* (“Conversely, a recent study reported that negative learning-centered state (confusion) improve learning because of an increased focus of attention on learning material that leads to higher performances on post tests and transfer tests.”).

138. See *id.* (“[E]xcess and chronic stress impairs learning and is detrimental to memory performance.”).

139. See, e.g., Joseph E. Flynn, Jr., *White Fatigue: Naming the Challenge in Moving from an Individual to a Systemic Understanding of Racism*, 17 MULTICULTURAL PERSPECTIVES 115, 116 (2015) (explaining how white fatigue stymies the learning about the deleterious effects of systemic racism); Nolan L. Cabrera, “*But I’m Oppressed Too*”: *White Male College Students Framing Emotions as Facts and Recreating Racism*, 27 INT’L J. QUALITATIVE STUD. EDUC. 758, 776 (2014) (comparing the white racial reactions of males in two colleges: one all white and one diverse).

140. See Flynn, Jr., *supra* note 139, at 115 (explaining differing reactions to race related discussions and experiences).

141. See Jasmine Roberts, *I’m Tired of Talking about Race*, TED x The Ohio State University (Feb. 2019) (detailing personal experiences caused by current struggles with racism) [perma.cc/GF8M-XMWH].

142. See, e.g., Tyng et al., *supra* note 132, at 1469 (explaining that the differences in emotional processing of stress such as personality traits, intellectual ability and sex hormones impact the influence of emotion).

143. See *id.* at 1457 (detailing the genetic aversion to triggering emotions and what the brain perceives as threatening situations).

All law professors and administrators should have heightened awareness about the potential racial stressors that impact learning—racial battle fatigue, stereotype threat, racial backlash, white fatigue, cognitive dissonance about racism, fear of getting it wrong, and vicarious trauma. This awareness is needed for multiple pedagogical reasons. First, it will allow educators to self-assess their own teaching about racism. Second, educators will more likely be able to identify when students are experiencing racial stress. Third, educators will be able to include, as part of their teaching, information about effective coping mechanism to manage the individual racial stressors that may arise. Finally, educators can create a classroom milieu that encourages the safe discussion about racial stressors as part of a lawyer’s professional development.

*C. Individual Law School Community Members Experience  
Different Types of Racial Stressors*

The following is an explanation of the individual racial stressors that law students may experience. The racial stressors are explained as discrete stressors solely for clarification purposes. In real life and in law school where racism is ubiquitous, members of the law school community may experience multiple racial stressors simultaneously. Moreover, an event that triggers one racial stressor may then have a domino effect that triggers other racial stressors as well.

By way of illustration, a law student who is Black may feel stereotype threat when they enter a law school where Black students and faculty are underrepresented. In a law school class, as the only Black student, they may also experience racial battle fatigue when they are incorrectly designated as the true spokesperson about racism. Moreover, the white backlash the student experiences from other students may exacerbate their feelings of stereotype threat. When that law student enrolls in a clinic, the student may experience vicarious trauma when they are representing an elderly Black client who continues to suffer from the racism to which the student and the student’s loved ones have also been subjected. As is discussed throughout this paper, the

student can either become paralyzed by these stressors, or with the support of law school professors, administrators, and students, can learn to manage these stressors and turn them into motivators for social change.

#### *D. Racial Battle Fatigue*

Students of Color may experience *racial battle fatigue*, a stressor that results from “dealing with daily microaggressions enacted by White people.”<sup>144</sup> Part of this racial battle fatigue is the exhaustion of explaining to white people, including allies, what it feels like to experience racism throughout your day, every day. A common reported experience, Black law students find it exhausting and burdensome when they are regarded as the representative voice of all Black people when the issue of racism is discussed. This is particularly tiresome in law school classes especially, when the Black student may be the only person of color in the room.

#### *E. Stereotype Threat*

Stereotype threat, which was discussed in the preceding section, may adversely impact the performance of Black, people of color and white law students.<sup>145</sup> Stereotype threat “is a contextual phenomenon in which a person feels as though her actions may confirm an existing stereotype about a group to which she belongs. Ultimately, this threat hampers performance.”<sup>146</sup>

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144. Flynn, Jr., *supra* note 139, at 118; *see, e.g.*, William A. Smith et al., ‘You Make Me Wanna Holler and Throw up Both My Hands!’: *Campus Culture, Black Misandric Microaggressions, and Racial Battle Fatigue*, 29 INT’L J. QUALITATIVE STUD. EDUC. 1 (2016).

145. *See* Flynn, Jr., *supra* note 139, at 118 (explaining how stereotype threat may also adversely impact the performance of White students when they are learning about racism).

146. *Id.*

The research documents the adverse impact of stereotype on minoritized groups well.<sup>147</sup> And, law school culture abounds with practices that can trigger stereotype threat for minority students.<sup>148</sup> Just entering a law school that is predominantly white can trigger stereotype threat and evoke the biased thinking “*If there are so few Black law students, maybe it is true that Black students are intellectually inferior.*”<sup>149</sup> And, as minority students participate in law school life, they may also find stereotype threat triggered by such regular activities as engaging in the Socratic method, test score rankings, competing for a place on law review may also prime these false racial narratives.<sup>150</sup> Unless faculty and administrators, cognizant of the deleterious effects of racial stressors generally and stereotype threat in particular, provide necessary support to invalidate these false narratives and empower students to their full potential, these biases become self-fulfilling prophecies and adversely impact student performance.<sup>151</sup>

Racial stereotype threat may also have an adverse effect on white students. Emerging research also shows how white students might internalize the discussions about how white supremacy has maintained systemic racism and react with “resistance, guilt or

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147. See, e.g., Claytie Davis III et al., *Shades of Threat: Racial Identity as a Moderator of Stereotype Threat*, 32 J. BLACK PSYCH. 399, 400 (2006) (“Stereotype threat helps explain why at every level of preparation, Blacks tend to perform less well on tests of achievement and college curriculum than European Americans.”); M.A. Beasley & M. J. Fischer, *Why They Leave: The Impact of Stereotype Threat on the Attrition of Women and Minorities from Science, Math and Engineering Majors*, 15 SOC. PSYCH. EDUC. 427, 429 (2012) (“Stereotype threat also drives students to defend their self-esteem by disengaging from the domain in question.”).

148. See Atkins, *supra* note 130, at 146 (“Gen Z students of color entering law schools without adequate minority representation on faculty or staff will suffer under the weight of stereotype threat.”).

149. *Id.*

150. See *id.* at 147 (“Each of these activities may produce harmful narratives in the students about how they don’t belong in law school, how “stupid” they sound when speaking in class, how much less they know about the law than their legacy classmates, and more.”).

151. See *id.* (“And if not mitigated through intentional efforts by faculty and administrators, these negative thoughts can become self-fulfilled through poor performance in law school and potentially on the bar exam.”).

fatigue.”<sup>152</sup> Thus, as discussions of racism education become a part of law school curriculum, and the acknowledgment of how white students have benefitted from white supremacy becomes a part of that learning, and professors and administrators versed in racial stressors can empower these students to manage that stress by become agents of change who address racism.

### *F. Racial Backlash*

Racial backlash is the term used to describe white people’s erroneous fears and rebellious reactions to the advancements of Black people and people of color.<sup>153</sup> The false thinking that animates white backlash is that the legal and social advancements to address the racial discrimination of people who are Black or of color, come at the expense of white privilege.<sup>154</sup> According to this distortion, affirmative steps to stop racist practices is a zero-sum game and white people, not Black people, are the victims who are losing their privileged status.<sup>155</sup> In the law school context, the discussion to include racism education in the law school curriculum is likely to trigger white backlash among those that misinterpret such inclusion as a loss for themselves and other white people. Within the law school community, white backlash

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152. See, e.g., Flynn, Jr., *supra* note 139, at 122 (“[I]t is a phenomenon that can occur to any groups (or individuals) who feel that their performance is vulnerable to a stereotype widely associated with their particular group.”).

153. See Lawrence Glickman, *How White Backlash Controls American Progress*, THE ATL. (May 21, 2020) (“[T]he word backlash . . . quickly became a synonym for a new and growing conservative force, signifying a virulent counterreaction to all manner of social movements and cultural transformations that became central to American politics.”) [perma.cc/2GS4-6SRZ]; Smith et al., *supra* note 144, at 3 (“Historically, White patriarchy has constructed Black males as phobic entities who threaten the order of American society . . .”).

154. See Glickman, *supra* note 153 (“[Modern] protesters, too, combine the paranoia and insecurity that have long warped our political culture with acclamations of freedom for some at the expense of freedom for all.”).

155. See *id.* (“[Backlash] came to stand for a topsy-turvy rebellion in which white people with relative societal power perceived themselves as victimized by what they described as overly aggressive African Americans demanding equal rights.”).

may take the form of microaggressions,<sup>156</sup> questions about the competency of the law student who is Black or a person of color, and disparaging comments about the mentoring and diversity opportunities provided for Black students and students of color.

If law school communities don't provide a psychologically safe and respectful space to discuss these fears, give voice to these concerns and replace individual fears with a more accurate reality, white backlash can derail a law school's efforts to integrate racism education in the law school curriculum.

### *G. White Fatigue*

Some white students may not be as receptive to learning about racism because of the stressor known as white fatigue.<sup>157</sup>

White fatigue attempts to name the dynamic of [w]hite students who intuitively understand or recognize the moral imperative of antiracism (primarily viewed as individual racism); however, they are not yet situated to fully understand the complexity of racism . . . those who are *fatigued* claim to be "tired talking about" racism, despite the intuitive understanding that racism is morally wrong. This phenomenon is further aggravated by students' desire to not be judged as racist. White fatigue is an attempt to consider the humanity and struggle of White folks that are in the process of gaining a more nuanced understanding of how racism functions, which is not an easy process by any means.<sup>158</sup>

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156. One of my Black law students reported that a white student refused to call her by name as he did with other students, and instead referred to her as the student sitting on the right in the last row.

157. See, e.g., Flynn, Jr., *supra* note 139, at 115 ("White fatigue occurs for White students who have grown tired of learning and discussing race and racism, despite an understanding of the moral imperative of anti-racist and anti-oppressive practices.").

158. *Id.*

Put another way, white fatigue occurs when the individual is overloaded from the personal stressors that are activated when they are learning about racism.<sup>159</sup> This stressing overload is caused by the conflicting messages from anti-racist educators, mainstream culture, and personal experiences.<sup>160</sup> A consequence of white fatigue, the individual's racism learning cannot advance beyond an understanding of prejudice individual discrimination.<sup>161</sup> Rather, an individual suffering from white fatigue is emotionally blocked from appreciating the long range and deleterious consequences of systemic and institutional racism.<sup>162</sup>

Whether or not a law school is diverse may also influence whether students and faculty are even receptive to learning about racism.<sup>163</sup> Nolan L. Cabrera studied the reaction of two groups of white-male university students about race: one group attended a predominantly white college while the other group attended a diverse college.<sup>164</sup> Those white-male students who attended a non-diverse college were apathetic about race and didn't see their white superiority jeopardized by race-based policies and teachings.<sup>165</sup> In direct contrast, those white-male students who attended a diverse college expressed anger because the discussions were ubiquitous

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159. *See id.* at 116 ("White fatigue is brought about by the challenges and complexities of *learning* about racism.").

160. *See id.* (explaining the factors that lead to white fatigue).

161. *See id.* (detailing how these factors block an individual from fully understanding the overreaching aspects of racism).

162. *See id.* ("The stressors arising from the conflicting stream of messages from anti-racist and multicultural educators, media and popular culture, and personal experiences is a conceptual challenge for some White students as they attempt to shift their thinking from focusing on individual racism toward understanding institutional and systemic racism.").

163. *See* Cabrera, *supra* note 139, at 768 (depicting the differences in racial attitudes between students at predominantly white institutions and students at more diverse institutions).

164. *See id.* at 773 (describing Nolan Cabrera's methodology for his research project analyzing white male racial ideologies in higher education).

165. *See id.* at 779 ("In the less selective, predominantly White SWU, the participants tended to be apathetic regarding issues of racism. They tended to exist in White environments and did not see their positions at SWU threatened by race-conscious social policies.").



and it threatened their own standing in an already highly competitive environment.<sup>166</sup>

This author found similar reactions when she was vetting this article with respected colleagues. Those colleagues working in less diverse law schools didn't experience the struggles of making racism an institutional priority that those from more diverse schools were experiencing. Race, from their white enclave reality, was not an issue in their school. And, isn't that part of the problem? Racism, and the stress that goes along with it, does not magically disappear and immunize law schools from racism if law schools fail to see the problem of perpetuating predominantly white law schools.

#### *H. Cognitive Dissonance about Racism*

Students who are Black, people of color, or white each enter law school with their own biases about each other. For example, Black students may have been taught not to trust white people.<sup>167</sup> Similarly, white students may have been inculcated with racist beliefs about Black people and may have internalized these falsehoods.<sup>168</sup> However, a law school that has adopted anti-racist values may then cause students to confront the inconsistency, also known as cognitive dissonance, between the racial biases they had

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166. See *id.* at 779–80.

Conversely, the students at WU tended to be very angry regarding issues of race, and this was a function of two issues. First, WU was no longer a predominantly White institution and the participants generally could not escape multiculturalism as part of their everyday lived experience. Second, the highly competitive academic environment at WU meant that many of the participants tended to frame their social position as threatened by race-conscious social policies such as affirmative action.

167. See Riana Elyse Anderson et al., *Choosing to See the Racial Stress That Afflicts our Black Students*, 101 THE PHI DELTA KAPPAN 20, 22 (2019) (suggesting that mistrust is a form of racial socialization facilitated by Black parents in order to prepare their children to survive in a racially charged culture).

168. See Erin N. Winkler, *Children are Not Colorblind: How Young Children Learn Race*, INCLUSIONS.ORG (describing the various ways children develop racial biases through socialization and the mechanisms through which this socialization operates).

absorbed before law school and the anti-racist reality they are experiencing in law school. This personal accounting for internal consistency is a stressful process that requires an internal renegotiation with the biased beliefs that have been internalized and the real life experiences in law school. Adding to that stress, law students experiencing cognitive dissonance about racism may also have to renegotiate relationship boundaries with those colleagues, friends and families who manifest their racist beliefs. The stress of cognitive dissonance should not be underestimated. Before the Thanksgiving break, law students in my school requested that we hold Courageous Conversation workshops to help them manage the stress of constructively engaging with family and friends who remained steadfast in their racist beliefs. High anxiety!

### *I. Fear of Getting it Wrong*

Law school administrators, faculty, and students experience anxiety when talking about racism because of the fear of getting it wrong by inadvertently offending, and then being inaccurately branded or cancelled.<sup>169</sup> Exacerbating this fear is the lack of consensus within groups of people who are Black, people of color, or white about what is another time.

Sharing a recent personal example, I have been afraid of getting it wrong by using the wrong nomenclature to describe different racial groups. *What was the appropriate nomenclature for identifying individuals who are Black, people of color, and white?* Even though I consulted a diverse group of students and professors, there was no consensus within each racial group. My fear of getting it wrong was increasing. *Should the focus only be on Black people, because including people of color dilutes the racism that Black individuals experience? How does the author give voice to the stress that all people in the legal community experience—Black, indigenous people, people of color, and white—without being misinterpreted to diminish the racial stress any one group*

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169. See generally Daisy Auger-Dominguez, *Getting Over Your Fear of Talking About Diversity*, HARV. BUS. REV. (Nov. 8, 2019) [perma.cc/B3DS-TZPL].

*experiences?* Each person advised based on their selective racism perception that has evolved over their lifetime.<sup>170</sup> One advisor suggested that I use the umbrella phrase “POC” to refer to people who were Black and people of color. Still another suggested “BIPOC” to include Black, indigenous and people of color. Offering a different point of view, another colleague emphasized the importance of Black people receiving separate recognition for the racism they experience. Another reminded me to capitalize the “b” in Black and use lower case letters for the “w” in white. Still another urged that both the “b” in Black and the “w” in white be capitalized to represent equal treatment. Still, another advisor challenged the use of “Black.” What if I got it wrong?

### *J. Vicarious Trauma*

The real-life or simulated experience of clients subjected to racism, both in their lives and in their quest for justice may also make students and their professors vulnerable to vicarious trauma. “Vicarious trauma” is the term used to describe the psychological impact that professionals may sustain when working with clients who have experienced severe trauma.<sup>171</sup> Professionals

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170. See Asha Sharma, *A Review On: Perception and its Effect on Judgments*, 6 J. MGMT. RES. & ANALYSIS 164, 166 (2019) (highlighting the passionate debate and non-consensus among racial groups and academics about the best way to move forward); Randall L. Kennedy & Eugene Volokh, *The New Taboo: Quoting Epithets in the Classroom and Beyond*, 49 CAP. U. L. REV. 1, 2–3 (2021) (discussing the appropriateness of using racially and socially charged language in the classroom); John McWhorter, *WOKE RACISM: HOW A NEW RELIGION HAS BETRAYED BLACK AMERICA* 3 (2021) (arguing that the increase of “wokeness” is not necessarily a positive thing); Jesus L. Penabad et al., *The Superfluous Term: Don’t Call Us ‘Latinx,’* THE WALL ST. J. (Dec. 31, 2021, 1:13 PM) (documenting letters to the editor from Latino people decrying the use of the term “Latinx”) [perma.cc/4YSX-NWFG].

171. See Lisa McCann & Laurie Anne Pearlman, *Vicarious Traumatization: A Framework for Understanding the Psychological Effects of Working with Victims*, 3 J. TRAUMATIC STRESS 131, 133 (1990) (describing vicarious traumatization as the profound psychological effects that persons who work with victims may experience); M. Lynne Jenkins, *Teaching Law Students: Lessening the Potential Effects of Vicarious Trauma*, 37 MANITOBA L. J. 383, 383 (2013) (defining vicarious trauma as a phenomenon where “helpers begin to display a constellation of symptoms comparable to their traumatized clients’ set of symptoms”); Grace Maguire & Mitchell K. Bryne, *The Law Is Not as Blind as It*

working with such clients may experience their own cognitive and psychological toll commensurate with the intensity of the client's trauma.<sup>172</sup> For example, therapists working with trauma victims may, as a consequence of hearing about the client's victimization, experience a disruption in how they see the world, a diminution of their own self-worth and a decreased ability to trust others.<sup>173</sup> Thus, upon hearing about a client's trauma, the therapist, too, might become less trusting of the world and instead see the world as an unsafe place in which they are powerless.<sup>174</sup> Therapists experiencing vicarious trauma may find that their internalization of their client's trauma also affects their memory.<sup>175</sup> Such trauma internalization may manifest itself in traumatic flashbacks, dreams or intrusive thoughts that may last a short time or continue long term.<sup>176</sup>

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*Seems: Relative Rates of Vicarious Trauma among Lawyers and Mental Health Professionals*, 44 PSYCHIATRY, PSYCH. & L. 233, 233 (2017) (viewing vicarious trauma as professionals' indirect experience of distress and traumatization after having been exposed to their clients' trauma); *see also* Andrea Nikischer, *Vicarious Trauma Inside the Academe: Understanding the Impact of Teaching, Researching and Writing Violence*, 77 HIGHER EDUC. 905, 905 (2019) (“[H]armful changes that occur in professionals' view of themselves, others, and the world as a result of exposure to the graphic and/or traumatic material of their clients.”).

172. *See* McCann & Pearlman, *supra* note 171, at 136–37 (detailing the effects that empathy and absorption by the professional while attending to the client may have on the professional's own wellbeing).

173. *See id.* (“Soul sadness can be contagious.”); *see also* Jenkins, *supra* note 171, at 392 (describing how vicarious trauma adversely alters the way the professional sees the world making them feel less competent to engage in this unsafe world).

174. *See* McCann & Pearlman, *supra* note 171, at 138 (“[T]herapists may become suspicious of other people's motives, more cynical, or distrustful.”); *see also* Jenkins, *supra* note 171, at 392 (showing how vicarious trauma makes it difficult for therapists to trust others).

175. *See* McCann & Pearlman, *supra* note 171, at 142 (“Therapists who listen to accounts of victimization may internalize the memories of their clients and may have their own memory systems altered temporarily or permanently.”); *see also* Jenkins, *supra* note 171, at 392 (explaining how law students may develop symptoms similar to those of a survivor client, including memory loss).

176. *See* McCann & Pearlman, *supra* note 171, at 142 (addressing how internalizing the trauma of another can manifest in a variety of ways); *see also* Jenkins, *supra* note 171, at 392 (remarking how trauma internalization can present itself through nightmares and bodily sensations, such as physical pain).

The term “vicarious trauma” was originally coined by Lisa McCann and Laurie Anne Pearlman in 1990 and was initially developed to describe the psychological consequences therapists experience when working with clients who experience trauma.<sup>177</sup> Approximately fifteen years later, legal scholars began expanding the application of the concept of vicarious trauma to include the impact lawyers and law students experience when working with traumatized clients.<sup>178</sup> In this article, I continue to expand the umbrella of the term “vicarious trauma” to include how racism affects law professors and students.

As with the individual reactions and differentiated coping mechanisms each individual responds to stress, the individual personality of the professional and their personal history with trauma will determine whether the professional is either vulnerable or resilient to vicarious trauma.<sup>179</sup> Those individuals who score high on “Neuroticism” are more likely to be susceptible to vicarious trauma.<sup>180</sup> Neuroticism is the term used to discuss those individuals who are disposed to respond to stress with heightened “anger, anxiety, self-consciousness, irritability, emotional instability and depression.”<sup>181</sup> The discussion about how

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177. See McCann & Pearlman, *supra* note 171, at 133 (noting the origins of the term “vicarious trauma”).

178. See Lynette M. Parker, *Increasing Law Students’ Effectiveness When Representing Traumatized Clients: A Case Study of the Katharine & George Alexander Community Center*, 21 GEO. IMMIGR. L. J. 163, 181 (2006) (exploring how law students experience and deal with vicarious trauma as well as how they can do so in a more manageable way); see also Jenkins, *supra* note 171, at 383 (reporting that lawyers practicing in the areas of criminal, family, immigration and child protection law experience vicarious trauma); see also Maguire & Bryne, *supra* note 171, at 233 (finding that both mental health professionals and lawyers suffer from vicarious trauma); see also Kelley Burton & Amanda Paton, *Vicarious Trauma: Strategies for Legal Practice and Law Schools*, 46 ALTERNATIVE L. J. 94, 95 (2021) (arguing that lawyers are at a heightened risk of vicarious trauma compared to other helping professionals).

179. See Maguire & Bryne, *supra* note 171, at 233 (emphasizing that individuals may respond to and cope with vicarious trauma differently depending on certain personal characteristics that they possess).

180. See *id.* at 234 (pinpointing Neuroticism as a defining factor in how susceptible a legal professional is to the effects of vicarious trauma).

181. See, e.g., Thomas A Widiger & Joshua R. Oltmanns, *Neuroticism is a Fundamental Domain of Personality with Enormous Public Health Implications*,

vicarious trauma manifests in experiential, skills and clinical courses, will continue below.

*K. Multiple Racial Stressors May Be Activated in a Racist Interaction*

The following example illustrates how multiple racial stressors may be activated in day-day class interactions. A Black student in my skills class met with me to share her anger towards another student in our skills class. The class had been divided into groups of four, and the white student spearheading her group referred to her as “the student sitting in the last row” instead of referring to her by name as he had done with the other students in the group, all of whom were white. What did that say about her worth that she couldn’t even be referred to by name—stereotype threat? The offended student declined my suggestion to convene a meeting with her and the offending student, voicing her racial battle fatigue. She was tired of dealing with such microaggressions throughout the predominantly white law school -racial battle fatigue.

I, then, met with the offending student. He was unaware that his actions had caused his colleague pain and horrified that his actions were received as racist, especially since that wasn’t his intent - stereotype threat. He wanted to meet with the offended student, apologize for his offense, and discuss this further. The offended student declined and insisted that it was the offending student’s obligation, not hers, to learn more about racism and engage in a more respectful manner.

*L. Racial Stressors May Be Triggered in Doctrinal Courses*

Professor Kimberle William Crenshaw calls attention to the false narrative and racial stressors that are perpetuated when law professors traditionally teach their doctrinal courses based on the

application of objective rules.<sup>182</sup> Our laws are neither objective or applied objectively, but rather a perpetuation of the white dominant perspective of privilege.<sup>183</sup> Professor Crenshaw named this inaccurate frame about the law's objectivity "perspectivelessness,"<sup>184</sup> because it fails to acknowledge that objectivity is a legal fiction that ignores the different perspectives that actually incentivize the creation and application of our laws.<sup>185</sup>

The perpetuation of the objectivity myth may activate multiple stressors for law students who are Black or people of color. For example, some students may feel the stress of having to choose between being a "good student" and going along with the fantasy of applying the objective rule, rather than authentically sharing their own lived experience at the risk of being falsely branded as being emotionally preoccupied with race.<sup>186</sup> Some students may feel the stress of being the "spokesperson" for all Black people and people of color.<sup>187</sup> Still, other students may question the cost of

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182. See Kimberlé Williams Crenshaw, *Forward Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L. J. 1, 2 (1988) ("Dominant beliefs in the objectivity of legal discourse serve to suppress the conflict by discounting the relevance of any particular perspective in legal analysis and by positing an analytical stance that has no specific cultural, political, or class characteristics.").

183. See *id.* at 3 (recognizing that what is understood as "objective" or "neutral" is often the embodiment of a white middle-class world view); See generally JAMES FORMAN JR., *LOCKING UP OUR OWN* (Farrar et al. eds., 1st ed. 2017) (shedding light on how the ostensibly objective laws and policies adopted to fight crime are enforced to perpetuate a disparate impact on Black people and people of color).

184. See Crenshaw, *supra* note 182, at 2 (considering how "perspectivelessness" as a dominant mode of legal discourse is problematic for minority students).

185. See *id.* (acknowledging how the perspectives of people of color are overlooked when "perspectivelessness" is used within legal discourse).

186. See *id.* at 6 (observing how many in academia fail to understand how both majority and minority students perceive the world through a consciousness constructed at least partly through race).

187. See *id.* at 3 (adding that comments by Black students and students of color are often disregarded by other students who feel that race figures prominently in those statements).

becoming a lawyer if it requires adopting a false frame that ignores the racism they experience.<sup>188</sup>

Professor Krenshaw suggests that professors of doctrinal courses who want to perpetuate anti-racist values should consider a more accurate doctrinal framing of their course which includes the understanding of different perspectives and their interrelatedness to the formulation and application of our laws.<sup>189</sup> Such an approach “deprivileges the dominant perspective” and invites students to critically examine how seemingly race-neutral laws perpetuate racism.<sup>190</sup> When professors adopt this more accurate framing, they may alleviate some of the racial stressors that law students who are Black or people of color have experienced while activating other stressors. For example, some white students may experience cognitive dissonance if the truths they are learning about faux objectivity are in conflict with their racist values and beliefs. All students may fear getting it wrong when participating in class discussions. Therefore, as professors of doctrinal courses integrate anti-racist values in their teaching, they will also want to consider how they might support students to constructively address their own racial stressors that will inevitably arise as they engage in this more truthful learning.

#### *M. Racial Stressors May Be Heightened in Skills and Clinical Courses*

Skills and clinical courses offer students real-life opportunities to learn about managing racism in legal practice. All the racial stressors that may be triggered in doctrinal courses, racial battle fatigue, stereotype threat, white fatigue, cognitive

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188. *See id.* at 10 (suggesting that instructors become more conscious of the particular ways in which their discussions may contribute to making minority students feel alienated in the classroom).

189. *See id.* at 12 (claiming that minority students should be encouraged to include their personal knowledge in their legal analyses).

190. *See id.* at 8 (“Instructors wishing to explore racial issues without contributing to the anxiety of minority students should resist framing minority experiences in ways that make such experiences appear to be disconnected to broader issues and that can be easily forgotten as soon as the policy discussion is over.”).



dissonance, fear of getting it wrong, and vicarious trauma, may be further exacerbated in clinical and skills courses. In particular, law professors and law students in these courses are more likely to suffer from vicarious trauma when they experience how racism thwarts their clients' quest for justice.

Even though perspective-taking, a fundamental skill in all experiential courses,<sup>191</sup> is an invaluable tool to help students understand racism, it is also a potential source of racial stress for students. "Putting yourself in the other person's shoes" helps students develop a deeper understanding of the perspective of their client, the other side, and the decision maker on the case.<sup>192</sup> This deeper understanding informs the lawyer about how to be a more effective advocate and a skilled problem-solver. *How does your race and the race of your client influence the attorney/client relationship? Was the predominant race of all justice participants similar or different than the race of your client? How did that affect your client's perception of justice? Was race a consideration in the selection of a third-party neutral for your client's case? How, if at all, did the race of the judge or neutral third-party impact the administration of justice for your client? Did your client feel the process was fair or biased?*

Yet, when students practice perspective-taking while conducting simulations or preparing for actual cases that involve racism, they might also experience racial stressors and a re-traumatization of the racism that they have experienced in their personal lives.<sup>193</sup> Therefore, students will benefit from perspective-

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191. See Jim Stark & Doug Frenkel, *Improving Lawyer's Judgment: Is Mediation Training De-Biasing?*, 15 HARV. NEGOT. L. REV. 1, 36 (2015) (discussing how perspective-taking in mediation training helps heighten a lawyer's self-awareness about her own biases); see also Bonny L. Tavares, *Integrating Diversity through Design of Legal Writing Assignments*, in INTEGRATING DOCTRINE AND DIVERSITY: INCLUSION AND EQUITY IN THE LAW SCHOOL CURRICULUM 232 (Carolina Press eds., 2021) (explaining how a lawyer's ability to "step into the shoes of the client" enables the lawyer to be a more effective written and oral advocate).

192. See Stark & Frenkel, *supra* note 191, at 34 (noting the importance of actively imagining the other person's perspective).

193. See Lynette M. Parker, *Increasing Law Students' Effectiveness When Representing Traumatized Clients: A Case Study of the Katharine & George Alexander Community Center*, 21 GEO. IMMIGR. L. J. 163, 181 (2007) (suggesting that law students be provided with necessary training prior to working with

taking if the student also learns to constructively manage their racial stressors and the vicarious trauma they may experience.<sup>194</sup> In one example, several students in my class, *Mediation: Representing Clients*, were assigned to represent a corporate defendant in a mediation simulation. The students perceived the corporation to be guilty of racial discrimination and were unable to represent the client without additional psychological support. In another example, clinic students who are representing clients who have been discriminated against by their landlord and are then experiencing racism in court proceedings may experience vicarious trauma. Professors, too, are not immune from vicarious trauma.<sup>195</sup> During class debriefs and supervision, professors may experience vicarious trauma from the re-telling of racist assaults suffered by students and/or their clients.

The goals of training students to identify vicarious trauma caused by racism are three-fold. First, students need to be able to identify trauma caused by racism in their real or simulated

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clients in traumatized situations to ensure students' own personal trauma will not hinder the duty of care required to handle these clients).

194. See, e.g., Lindsay Muir Harris & Hillary Mellinger, *Asylum Attorney Burnout and Secondary Trauma*, 56 WAKE FOREST L. REV. 733 (2021) (showing higher stress and burnout regression results for immigration attorneys who have more diverse racial backgrounds); Kelley Burton & Amanda Paton, *Vicarious Trauma: Strategies for Legal Practice and Law Schools*, 46 ALTERNATIVE L.J. 94 (2021) (stating that legal professionals are at a heightened risk for vicarious trauma from engaging with various traumatic materials and that this should prompt law schools to implement trauma initiatives); M. Lynne Jenkins, *Teaching Law Students: Lessening the Potential Effects of Vicarious Trauma*, 37 MANITOBA L. J. 383 (2013) (explaining the challenges some attorneys face in their field when presented with emotional and traumatizing details of their clients); Lynette M. Parker, *Increasing Law Students' Effectiveness When Representing Traumatized Clients: A Case Study of the Katharine & George Alexander Community Center*, 21 GEO. IMMIGR. L. J. 163 (2007) (training law students to separate logic from emotions is not sufficient for them to enter traumatic clientele meetings and not be impacted or affected by personal past trauma).

195. See Emelina Minero, *When Students are Traumatized, Teachers Are Too*, EDUTOPIA (Oct. 4, 2017) (providing examples of situations teachers are placed in where they are directly helping students process their trauma, which exposes teachers to vicarious trauma, sometimes called "cost of caring") [[perma.cc/8T9Q-4U97](https://perma.cc/8T9Q-4U97)].

clients.<sup>196</sup> Second, students need to learn different approaches to effectively work with clients who are suffering from trauma caused by race.<sup>197</sup> Third, students need to learn different self-care approaches to respond to their own needs when they experience vicarious trauma.<sup>198</sup>

Upon closer scrutiny, we see how *not* dealing with the vicarious trauma of racism can interfere with all aspects of the attorney/client relationship. As one illustration, if a client has experienced the vicarious trauma of racism, the student attorney may need to adjust how they work with the client and prepare the case.<sup>199</sup> The client may not be forthcoming about what happened, fail to provide needed case documentation, and/or miss scheduled appointments.<sup>200</sup> The student lawyer may need to learn how to respond to the client's lack of emotion or depth of emotion about the racism the client has endured.<sup>201</sup> In another example, the student lawyer may need to learn to engage and work with the traumatized client in a way that doesn't cause the client to be re-traumatized.<sup>202</sup>

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196. See Parker, *supra* note 193, at 178 (requiring students to establish the ability to successfully prepare all aspects of the case without injecting their personal trauma).

197. See *id.* at 178 (arguing that several approaches to address client's trauma).

198. See *id.* at 179 (advocating for law students to understand their trauma and needs in tough situations and to utilize that understanding to further help clients).

199. See *id.* at 171 (noting how lawyers needs to be cognizant of a client's trauma when dealing with their client).

200. See *id.* (describing how clients may have trouble recounting events because it can feel as if they are re-living the traumatic moments).

201. See *id.* at 174 (recognizing that coping with trauma can be showcased in emotional or avoidance testimonies and that law students should be trained to handle both situations).

202. See *id.* at 175 (highlighting that working with clients who have a traumatic background involves working with the case at hand and the entire traumatic experience, and therefore, being patient and compassionate with the client by asking questions that do not invoke the negative memories).

*N. There Is Heightened Risk of Being Cancelled if Racial Stressors Are Ignored*

Through a dispute resolution lens, this author views cancelling as the failure of law schools to constructively manage the inherent racial stress of faculty and students experienced within the law school community.<sup>203</sup> Cancelling is the public shaming, demotion, and/or firing of a professor who is alleged to have mishandled the discussion of race, was racist, or was insensitive to the racial stressors.<sup>204</sup> For some students, cancelling provides an empowering voice to draw attention to their long-denied cries about racism's prevalence in legal education and a viable option to respond to their racial stress in law school.<sup>205</sup> As discussed at the beginning of this paper, both Black and white professors can be victims of cancelling. What is particularly troubling about the pool of professors who have been cancelled is that there is no distinction among those professors who are committed to anti-racism but may have mishandled or were insensitive to students' racial stressors in their racism pedagogy from those professors who spew racist beliefs.<sup>206</sup>

Just witnessing the demise of a few respected colleagues who have been cancelled has caused law professors to become cautious, and even avoid, engaging in discussions about race out of fear of also being cancelled themselves.<sup>207</sup> After all, errors about the way a professor decides to teach racism in the law can result in the end

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203. Although some scholars have raised that cancelling implicates free speech and academic freedom issues, those issues will be debated in other scholars' works. *But cf.* Loretta Ross, *I'm a Black Feminist. I Think Call-Out Culture is Toxic*, N.Y. TIMES (Aug. 17, 2019) (pushing for more effective ways to build social justice movements other than cancel culture) [perma.cc/R88L-FLXV].

204. See Ross, *supra* note 203; see also sources cited *supra* note 14.

205. See A.P. Dillon, *UNC Law Student Letter Calls out 'Culture of Bullying,' Silencing of Dissent*, THE N. ST. J. (Mar. 10, 2021) (highlighting alleged bullying culture at University of North Carolina) [perma.cc/D674-7D2N].

206. See generally Kathryn Rubino, *Posts by Kathryn Rubino*, ABOVE THE L. [perma.cc/FM2W-24ZV]. This author believes, however, that racism is learned, not genetic, and that every offender deserves an opportunity to participate in conversations of understanding and to take responsibility for any harm they may have caused.

207. See *supra* Part II.

of a professor's academic career.<sup>208</sup> Thus, cancel culture has had a chilling effect on law professors' receptivity to including education about racism in their courses. The fear of being cancelled is ever-present and also deters law school professors from focusing their scholarship on racism.<sup>209</sup> As this author wrote this paper, she was cautioned by multiple colleagues that this could be the premature death knell of her career. What if I got it wrong?

Another troubling consequence of cancelling is that all the stakeholders in the law school—students, professors, and administrators—have lost the opportunity to understand why the incident surrounding the cancelling happened and to develop a heightened sensitivity about how to better address the offending incident going forward. This lost opportunity has occurred because the law school has failed to implement a dispute system design process in which students can air their concerns, and professors can receive constructive feedback to effectively teach topics that are race stressors for some. As stated above, some defend cancelling as an empowering and amplifying vehicle for students whose voices have not been heard. This author supports a more constructive process for students' concerns to be heard.

The following example illustrates the lost opportunity of cancelling and offers an alternative for students to voice their concerns. A law professor with a long-standing reputation as a civil rights advocate and an outstanding educator was explaining to the law class how published judicial decisions are replete with racism. To prove this point, the professor then proceeded to read a judicial decision with the "n" word. The professor has used this case before, and students have previously reported it was an effective learning tool. This time, however, one of the students in the class was traumatized by hearing the "n" word. The student's racial stressors were activated. What options does the student have to cope with

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208. Intent is not a defense. The focus is on the racial stress that it causes the students. See sources cited *supra* note 20.

209. See Anne Applebaum, *The New Puritans*, THE ATL. (Aug. 31, 2021) (discussing how the fear of being cancelled has caused scholars to be overly cautious with their publications) [perma.cc/WZ5F-WMEE].

that racially stressful incident and to get the law school to protect that student from future racial stress?<sup>210</sup>

In a law school that does not have an anti-racist culture with a system of dispute processes designed to manage the racial stressors of those within their law school community, cancelling may appear to be a reasonable response. The student could report the incident to *Above the Law* and initiate the cancelling of the offending professor; alternatively, the student could go directly to dean of the law school, recount the trauma the student experienced hearing the professor use “n” word and demand that the professor be fired.<sup>211</sup> The dean, empathizing with the stressed student in wanting to avoid having the school branded as racist, could demote the professor, or in a worst-case scenario, fire them. And, the

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210. This hypothetical is part of a larger debate about racism education. There are those like this author who believe aspiring law students must learn to develop coping mechanism to deal with the racial stress they will experience in law practice. See Randall L. Kennedy & Eugene Volokh, *The New Taboo: Quoting Epithets in the Classroom and Beyond* (Aug. 29, 2020) (unpublished paper) (exploring the propriety of professors using epithets in educational settings) [perma.cc/CW7H-6BG9]; see also John McWhorter, *Woke Racism: How a New Religion Has Betrayed Black America* (2021) (arguing the effects of antiracism movements); see also *The Superfluous Term: Don't Call Us 'Latinx,'* THE WALL ST. J. (Dec. 31, 2021) (collecting letters to the editor from Latino people decrying the use term “Latinx”) [perma.cc/ZF83-C2MD]; see also David Marchese, *Nikki Giovanni Has Made Peace with Her Hate*, N.Y. TIMES MAGAZINE (Dec. 26, 2021) (interviewing the poet Nikki Giovanni about the politics of racism in education) [perma.cc/9WRE-4BCH].

211. There are those readers who are probably outraged and believe that a law professor who was so racially insensitive deserves to be cancelled. After all, “shouldn’t racist professors be fired?” However, if we are truly committed to the larger goal of creating an anti-racist law school environment, we also need to create a supportive law school environment that acknowledges all its members racism stressors, provide ample opportunity to support initiatives that educate about racism and be prepared to learn from the inevitable mistakes. Furthermore, this author believes that law school professors and administrators should model a constructive course(s) of action that law students could replicate to address racism they will confront in their legal careers. Cancelling frustrates those goals. As discussed earlier in the paper, law school deans in public law schools and some private law schools may not have the authority to summarily fire an offending law professor without adhering to the due process procedures regarding termination.

resounding message to faculty is that if you include racism in your courses, you do so at your own peril.<sup>212</sup>

In a law school that is committed to developing an authentic anti-racist culture, there should also be a system of dispute processes in place to respond to incidents where racial stressors are triggered. In the scenario above, the dean could be prepared to empathize with the student, have a learning meeting alone with the professor, support the professor and student in a learning meeting together, and possibly share the lessons learned with the rest of the faculty and student body. Of course, all these meetings should be confidential. The focus is on deepening the law school community's understanding about racism and heightening the community's awareness about community member's differentiated racial triggers so that offensive incidents, such as the one described, are less likely to happen again.

The discussion of cancelling raises additional questions about racism pedagogy. Some racism education scholars recommend that professors should provide warnings and allow students to excuse themselves if they know that a subject could potentially activate racial stressors.<sup>213</sup> However, this author questions that approach.<sup>214</sup> Race is ubiquitous throughout life and legal practice. Managing racial stressors is a life skill and advocating in a racist system is an essential practice skill for aspiring lawyers.<sup>215</sup>

The next section will prescribe the dispute system design considerations for those law schools who seek to constructively manage the racial stressors within their law school community.

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212. See Applebaum, *supra* note 209 (noting that with the rise of cancel culture professors have begun censoring themselves in the classroom).

213. See CATHY A. COSTANTINO & CHRISTINA S. MERCHANT, *DESIGNING CONFLICT MANAGEMENT SYSTEMS* 82 (Jossey-Bass ed. 1996) (describing that one of the designer's role is to be a facilitator of difficult conversations between often opposing parties).

214. See *infra* Part IV.

215. For example, would we approve a surgeon-in-training of removing themselves from surgical training because they get faint at the sight of blood?

*IV. Section Three: Designing a Dispute System to Constructively Manage Racial Stressors Ignited in Legal Education*

Sections One and Two helped develop an understanding of the differentiated racial stressors all stakeholders within the law school community—students, professors and administrators—may experience from childhood onward when racism is discussed or ignored, and how failure to mitigate these stressors could impede racism education.<sup>216</sup> This section will highlight the design considerations law schools and law professors should consider when customizing their dispute system to constructively manage the inevitable racial stressors that will be triggered when racism education is introduced in the law school curriculum. A dispute system design aka DSD aka conflict management System Design (CMSD) is the law school's organizational plan to manage and constructively resolve any conflicts that may be triggered by conversations about racism.<sup>217</sup>

This suggested design draws from the interdisciplinary research explaining how stress can become a positive force and builds on restorative justice principles. The goal is to promote a psychologically safe culture within the law school that incentivizes the community to have candid conversations about race, heightens individual sensitivities about racism, and motivates professors to include racism education in their classes without fear of

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216. The first tenet in developing an effective DSD is to understand the conflict, racism, from the perspective of the stakeholders—administration, professors, and students. See LIDA BLOMGREN AMSLER, JANET K. MARTINEZ & STEPHANIE E. SMITH, DISPUTE SYSTEM DESIGN: PREVENTING, MANAGING, AND RESOLVING CONFLICT 308 (2020); NANCY H. ROGERS ET AL., DESIGNING SYSTEMS AND PROCESSES FOR MANAGING DISPUTES 67 (Wolter Kluwer ed., 2013); CATHY A. COSTANTINO & CHRISTINA S. MERCHANT, DESIGNING CONFLICT MANAGEMENT SYSTEMS 49–66 (Jossey-Bass eds. 1996); Carrie Menkel-Meadow, *Are There Systemic Ethics Issues in Dispute System Design? And What We Should [Not] Do About It: Lessons from International and Domestic Fronts*, 14 HARV. NEGOT. L. REV. 195, 198 (2009).

217. See, e.g., Andrea K. Bingham et al., *Ahead of the Curve: Implementation Challenges in Personalized Learning School Models*, 32 EDUC. POL'Y 454, 468–83 (2016) (identifying challenges, disruptions, and contradictions as they occur across schools engaged in implementing technology-mediated personalized learning).



cancelling.<sup>218</sup> When a community member's racial stressors are ignited by such conversations, however, the design provides for party-directed processes that convene affected parties, have conversations of understanding about how the interaction caused racial stress, and going forward, discuss more effective ways to have those conversations about racism. The focus is not on punishing or cancelling perceived offenders.<sup>219</sup> Rather, it's about acknowledging how specific actions may ignite individual racial stressors, taking responsibility for those actions, and working together as a community to heal and educate more effectively.<sup>220</sup>

This design also acknowledges the existing legal culture in many law schools,<sup>221</sup> legal education's longstanding racist history,<sup>222</sup> the hierarchical structure of law schools, and the ongoing reticence to educate about the emotional component of

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218. Applying a restorative justice framework, an incident that is experienced as racist is an opportunity for the entire law school community to come together, learn from what happened, decide on how the offender should be held accountable, and go forward healed, stronger, and wiser from the experience. See FANIA E. DAVIS, *THE LITTLE BOOK OF RACE AND RESTORATIVE JUSTICE: BLACK LIVES, HEALING, AND U.S. SOCIAL TRANSFORMATION* 19 (2019) (exploring how restorative justice has the capacity to disrupt patterns of mass incarceration through effective, equitable, and transformative approaches); see generally HOWARD ZEHR, *CHANGING LENSES: RESTORATIVE JUSTICE FOR OUR TIMES* (2015) (uncovering widespread assumptions about crime, the courts, retributive justice, and the legal process); see also SHERRILYN A. IFILL, *ON THE COURTHOUSE LAWN: CONFRONTING THE LEGACY OF LYNCHING IN THE TWENTY-FIRST CENTURY* 165 (2007) (discussing how restorative justice could help heal our country from its legacy of lynching).

219. See Tyler G. Okimoto et al., *Beyond Retribution: Conceptualizing Restorative Justice and Exploring its Determinants*, 22 SOC. JUST. RSCH. 156, 174–77 (2009) (exploring the restorative justice process and examining the extent to which it is viewed as a fairer response than unilateral decisions).

220. See *id.* at 157–58 (discussing the importance of offender's taking responsibility for their role in hurting the victim).; see generally OSHA GRAY DAVIDSON, *BEST OF ENEMIES: RACE AND REDEMPTION IN THE NEW SOUTH* (1996) (telling the story of how a Klu Klux Klan leader and a Black activist learned to respect the humanity of each other and help integrate schools in Durham, North Carolina).

221. All law school cultures are not the same. Whether the law school is elite or progressive, lower or higher ranked, a state or private school, varied student populations will influence how the school proceeds and whether there are any constraints on its actions.

222. See Crenshaw, *supra* note 182, at 2 (discussing the racist history of the traditional approach to teaching doctrinal courses).

legal education.<sup>223</sup> The design helps manage racial stress within the law school community, engender respect for individual reactions to racism, and foster a safe environment to have conversations about racism.<sup>224</sup> The long-term goal is to educate and incentivize aspiring lawyers how to harness the positive benefits of racial stress so that they can then be change agents when dealing with the ubiquitous racism in legal practice.

*A. High Anxiety When Talking About Racism Can Be Managed:  
Extrapolating from Interdisciplinary Research*

Within the past twenty years, interdisciplinary researchers have examined how stress, if properly managed with social support and modifications to the external environment can actually become a positive force rather than as a disabling impediment.<sup>225</sup> Three factors emerge as central to developing an individual's resilience to stress: *autonomy, competence, and relatedness*.<sup>226</sup> Reinforcing that point, studies that focused on racial stressors have demonstrated the importance of autonomy, competence, and relatedness.

For example, one study found that Black Americans relied on the following supports to cope with racism-related stress:<sup>227</sup> social support from families and the community, problem-solving skills,

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223. See, e.g., Randall Kiser, *The Emotionally Attentive Lawyer: Balancing the Rule of Law with the Realities of Human Behavior*, 15 NEV. L. J. 442, 462–63 (2015) (concluding that lawyers must be emotionally committed to and in tune with their clients and cases).

224. The purpose of the system is not to shield the law school from public scrutiny and minimize the likelihood that offended students will exercise their free speech rights on social media.

225. See SAMANTHA BOARDMAN, EVERYDAY VITALITY: TURNING STRESS INTO STRENGTH xi (2021) (demonstrating how to transform daily life into fulfilling days by embracing negative emotions); see also WENDY SUZUKI, GOOD ANXIETY: HARNESSING THE POWER OF THE MOST UNDERSTOOD EMOTION 5 (2021) (exploring the idea of leveraging anxiety to help solve problems and fortify well-being).

226. See BOARDMAN, *supra* note 225, at 21 (arguing that by increasing one's autonomy, competence, and relatedness, one's vitality will also increase).

227. See generally Shawn C. T. Jones et al., *From "Crib to Coffin": Navigating Coping from Racism-related Stress Throughout the Lifespan of Black Americans*, 90 AM. J. ORTHOPSYCHIATRY 267 (2020).

collective coping through mentorship or inter-group support, and religious practices.<sup>228</sup> This research also noted that Black parents continue to educate their children about racial socialization to constructively manage racial stress.<sup>229</sup> The researchers recommended that white parents, as part of their responsibility to racially socialize their children, should also educate their children about the power and privilege of being white.<sup>230</sup> In another study, Black medical students who have constructively managed the stress of perceived academic inequities underscored the value of social and spiritual support as well as the importance of organization activism.<sup>231</sup>

Shifting to workplace stress, researchers have examined how “challenge stressors” can have either a motivating or depleting effect on employees’ performance and creativity. Challenge stressors are “workload, time pressure, job responsibility and complexity which can stimulate individuals to grow and develop their career.”<sup>232</sup> The research suggests that employers could motivate the individual employee to overcome challenge stressors if the employer increases employee self-efficacy, energizes the employee by giving them the opportunity to learn specific new skills, and encourages the employee to use relaxation techniques.<sup>233</sup> Their research underscores the importance of racial

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228. See *id.* at 268–75 (offering different ways Black Americans have coped with racism related stress).

229. See *id.* at 270 (noting how Black parents unlike White parents will discuss with their children race, privilege, and power).

230. See *id.* (arguing that White parents need to sit their children down and discuss power and privilege and issues surrounding race).

231. See Cassandra Acheampong et al., *An Exploratory Study of Stress, Coping and Resiliency of Black Men at One Medical School: A Critical Race Theory Perspective* 6 J. RACIAL & ETHNIC HEALTH DISPARITIES 214, 217–18 (2019) (examining survey responses of 16 Black men who matriculated at one medical school to assess perceptions of medical school stress, finding the general stress of medical school can be compounded by additional race-related stress).

232. Xiaojuan Hu Yongbo Sun & Yixin Ding, *Learning or Relaxing: How Do Challenge Stressors Stimulate Employee Creativity?* 11 SUSTAINABILITY 1779, 1780 (2019).

233. See *id.* at 1779–80 (stating that while challenge stressors can result in the depletion of energy, they can also allow for individuals to have higher intrinsic motivation and confidence in their competence when they perceive challenge stressors to be within their own capabilities).

diversity among the professionals who deliver professional services. For example, when there is clinician-patient racial/ethnic concordance, Black patients more accurately reported their pain when they were being treated by a Black clinician.<sup>234</sup>

Culling from the research on making stress a positive, law schools should consider how they might integrate the principles of autonomy, competence within the law school culture to effectively manage racial stress. Within the law school, there should be supportive communities to help student cope with racial stress, commiserate, and advance anti-racist efforts. The law school should also have diverse and empathetic faculty to help students navigate racial stress. All students should be educated about the individual and systemic toxicity of racism, how white privilege perpetuates it, and how they as future lawyers may become agents of change.

*B. The Law School Administration Must Lead, Model, and Create a Supportive Anti-Racist Culture that Supports Racism Education*

A law school's decision to include racism education in the legal curriculum requires that the law school administration consistently supports this commitment through its leadership.<sup>235</sup> First, the law school's support needs to be perceived as genuine by both students, faculty, and other administrators. Racism education is about acknowledging race discrimination and

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234. See Steven R. Anderson et al., *Clinician, Patient Racial/Ethnic Concordance Influences Racial/Ethnic Minority Pain: Evidence from Simulated Clinical Interactions*, 21 PAIN MED. 3109, 3110 (2020) (finding that increasing minority physician number may help reduce persistent racial and ethnic pain disparities); see also Marcella Alsan, Owen Garrick, & Grant Graziani, *Does Diversity Matter for Health? Experimental Evidence from Oakland*, 109 AM. ECON. REV. 4071 (finding that when Black male patients were matched with Black doctors, Black patients had the black-white male gap in cardiovascular mortality reduced by 19%).

235. See, e.g., Atkins, *supra* note 130, at 160 (proposing outside of the box institutional diversity efforts which might include establishing scholarships to cover Faculty Appointments Register (FAR) form fees for underrepresented graduates or developing law school fellowship programs for students interested in or recruited into legal teaching).

understanding how and why our culture supports such discrimination. Therefore, if the law school has discriminatory practices in other areas such as a hierarchical organization that perpetuates discriminatory practices, its commitment is less likely to be perceived as genuine.<sup>236</sup> Furthermore, the law school needs to look back and address the school's own racist history.<sup>237</sup>

Second, the law school should respond to the inevitable blow-ups and stresses triggered by racism education as a learning opportunity, rather than a public shaming opportunity.<sup>238</sup> As a learning opportunity, students, faculty, and administrators should have the psychological safety to engage in these difficult conversations to candidly voice their concerns and hopefully develop an expanding understanding of racism.<sup>239</sup> Thus, the law school should prophylactically design and publicize the availability of party-directed dispute resolution processes that help foster such party empowerment and learning about racism when these blow-ups and misunderstandings arise.

Third, as part of the required first-year courses, the law school administration should include a course on how aspiring lawyers could effectively manage practice stressors, including racial stressors.<sup>240</sup> Such a course would acknowledge and normalize that

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236. See Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 605 (1982) (discussing how law schools integrate students into the hierarchical structure).

237. See Karen Sloan, *Another Law School Mulls Name Change Over slaveholding Supreme Court Justice*, REUTERS (Jan. 13, 2022) (commenting on how Cleveland-Marshall College of Law students want to change the school's name due to Marshall's problematic history as a slaveowner) [perma.cc/8P2S-FM3H].

238. This is a fundamental restorative justice principle. See FANIA E. DAVIS, *THE LITTLE BOOK OF RACE AND RESTORATIVE JUSTICE: BLACK LIVES, HEALING, AND U.S. SOCIAL TRANSFORMATION* 19 (2019); see also Ross, *supra* note 203 ("We can build restorative justice processes to hold the stories of the accusers and the accused, and work together to ascertain harm and achieve justice without seeing anyone as disposable people and violating their human rights or right to due process.").

239. See generally DOUGLAS STONE ET AL., *DIFFICULT CONVERSATIONS: HOW TO DISCUSS WHAT MATTERS MOST* (2010).

240. See Burton & Paton, *supra* note 178, at 94 (describing the risk lawyers face of developing vicarious trauma given their high-risk factors, both of personality and organizational structures). Just offering courses that provide students with information about systemic racism without also addressing the

racial stress and other stress are a part of legal education and the practice of law.<sup>241</sup> This course would also help signal to students that the effective management of stress, including racial stress, is an important skill for lawyers. Moreover, it reinforces the more accurate message that emotions are a significant aspect of the practice of law.<sup>242</sup>

Fourth, all law professors should attend an annual workshop on law school stressors, including racial stress.<sup>243</sup> This workshop should be conducted by an outside consultant who can legitimize and normalize the spectrum of fear professors have around racism education. As with the course for students, this would acknowledge and normalize that racial stress and other stress are a part of legal education and the practice of law. Law professors are not immune from such stress.<sup>244</sup> This course would also help signal to professors that the effective management of stress and racial stress are an important skill for lawyers and law professors. Finally, it reinforces the more accurate message that emotions are a significant aspect of legal education, both in doctrinal and skills

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differentiated emotions surrounding racism fails to help students manage their own stressors about racism. Irvine School of Law now requires all law students, as part of their graduation requirements, to complete a graded course that educates about “race and indigeneity, structural inequity, and the historical bases for such inequity.” *See UCI Law Adopts New Race and Indigeneity Curriculum Graduation Requirement*, UNIVERSITY OF CALIFORNIA IRVINE SCHOOL OF LAW (Apr. 6, 2021) (covering the race and indigeneity curriculum that the faculty voted to make a graduation requirement) [perma.cc/2CMC-A65U].

241. This would help dispel the myth that lawyers just tough it through. *See Janet Thompson Jackson, Work, Wellness, and Meaning: Reimagining Legal Education and the First 10 Years of Law Practice*, WELL-LAW (Apr. 12, 2022) (discussing how there is a lot of burnout (which is a response to race-based traumatic stress) in the legal field and there needs to be work to change that) [perma.cc/9EUE-U2Z8].

242. *See, e.g., RANDALL KISER, SOFT SKILLS FOR THE EFFECTIVE LAWYER 8* (2017) (calling attention to the importance of “soft skills” such as emotions as a critical part of effective lawyering). Even though this author agrees with the thrust of Mr. Kiser’s book, this author suggests that the label “soft skills” is a misnomer and inherently discriminatory.

243. *See Burton & Paton, supra* note 178, at 97 (“In responding to the problem, understanding how members of the legal profession are affected by [vicarious trauma] could be worthwhile.”).

244. *See id.* (providing that some of the personality traits, such as low emotional stability and neuroticism, common in lawyers increase susceptibility of vicarious trauma).

courses.<sup>245</sup> Although the workshop would be an annual occurrence, it is expected that law professors' heightened self-awareness about their own and their students' racial stressors is a continued personal exploration that would take place throughout the year.

Fifth, the law school should schedule an annual law school community racial check-in that includes law students, professors, and administrators to publicly share what is working and to constructively suggest how racism education might be made even more effective. Such a "taking the pulse" of the law school community would help assess if its efforts are actually aligned with its community's reactions.<sup>246</sup>

*C. Clinical, Skills, and Doctrinal Faculty Should Be Invited and Supported to Consider Including Racism Education in their Courses*

As part of the system's design, professors should be invited and supported, but not compelled, to include racism education in their courses.<sup>247</sup> For many professors, fear, be it the fear of not knowing how to teach racism in their course, fear of not knowing how to manage the different reactions to the topic, or fear of being

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245. See KISER, *supra* note 242, at 8 (noting that skills such as stress management and self-confidence, skills that are necessary to be successful in class, are important to effective lawyering). Thus, offering courses that provide students with information about systemic racism without also addressing the differentiated emotions surrounding racism fails to help students manage their own stressors about racism.

246. See CENTERS FOR DISEASE CONTROL AND PREVENTION, *THE PRINCIPLES OF COMMUNITY ENGAGEMENT* 171 (2d ed. 2011) (explaining that "participatory evaluation" improves the performance of programs by involving stakeholders in planning and review and "acknowledging and addressing asymmetrical levels of power and voice among stakeholders").

247. See Erin C. Dallinger-Lain, *Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment*, 67 J. LEGAL EDUC. 780, 792 (2018) ("In addition to receiving training, studies show that faculty who demonstrate attunement, authenticity, and power-sharing generate the most effective class dialogues about race."); Burton & Paton, *supra* note 178, at 97 ("As law schools become increasingly aware that [vicarious trauma] is a possible challenge that their students may face in the legal profession, it is critical that measures are implemented to manage [vicarious trauma] in law courses.").

cancelled, has a chilling effect on wanting to broach racism education in their courses. Thus, the law school administration, as part of their dispute system design, should take affirmative steps to respond to that fear. In the preceding segment, suggestions were made about how law schools could create a more receptive culture to racism education. However, law school professors can also take affirmative steps to effect this change.

Professors teaching similar courses should regularly convene to discuss whether, what, and how they are teaching racism education in their respective courses.<sup>248</sup> Although it has value to discuss the *what*, a focus of these discussions should be on the *how* to have conversations about racism education to minimize stress and enhance learning. When discussing race, professors will enhance learning and ensure students' psychological safety if they are attuned, authentic and share power with their students.<sup>249</sup> To help make these conversations productive, professors should learn to manage the stress and emotions these conversations will evoke by using such active listening skills as *decoding*, *encoding*, *immediacy*, and *clarity* skills.<sup>250</sup> For example, *decoding* involves listening.<sup>251</sup> *Encoding* is about responding to what is said.<sup>252</sup> When using *immediacy*, the professor uses eye contact and body language to demonstrate that the professor is listening and following what the student is saying at the moment.<sup>253</sup> For *clarity* that promotes students' understanding, an encoding skill, the professor uses

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248. See Dallinger-Lain, *supra* note 247, at 794 (“[T]here is also a need to keep up with cultural awareness. This type of awareness comes from diversity trainings that are held by many institutions, but it also comes from being aware of how race and oppression intersect the area of law in which a professor teaches.”).

249. See *id.* at 792–93 (explaining that professors who employ these techniques “will give students a sense of psychological safety” and develop “cultural competency,” ultimately making these students “better lawyers”).

250. See *id.* at 798 (“Ways in which professors decode (listen) and encode (respond) directly affect emotions within a highly charged racialized incident. Emotional response theory suggests that effective decoding, encoding, immediacy, and clarity skills result in positive emotional experiences and emotional change.”).

251. See *id.*

252. See *id.*

253. See *id.* (“Immediacy includes such decoding behaviors as eye contact and body language.”).



examples and explanations.<sup>254</sup> Although such facilitation skills may be second-nature to dispute resolution faculty, these skills may be less familiar to doctrinal faculty.

*D. Party-Directed Dispute Resolution Processes to Address Racial Stressors and Expand Learning*

As this paper has discussed, it is inevitable that a professor who includes racism education in their course will trigger racial stressors among students that the professor may be unaware of. For example, a Black student may be stressed when the professor regularly singles the student out to be the class spokesperson about race. Or, a student may be stressed when a professor gleans over the racial context of a legal case. Still, another student may be stressed when they are asked in a skills class to perspective take the position of one they perceive as racist. Yet, in another example, a student may become stressed at the method a professor is using to educate about racism. As has been discussed, the offended student may resort to cancelling the offending professor, because cancelling is the only course of action available to that student.

Therefore, law schools need to provide offended students with one or more party-directed dispute resolution processes to constructively address this issue without the student feeling the need to cancel the offending professor, because cancelling is the only course of action available.<sup>255</sup> This design intentionally relies on party-directed processes instead of third-party processes. As noted at the beginning of this paper, everyone is racist.<sup>256</sup> Thus, a

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254. See *id.* (“Clarity involves the encoding skills of using examples, descriptions, and explanations to help student understanding.”).

255. Party-directed processes empower all those involved in the dispute an opportunity to discuss the matter and decide an appropriate resolution. A party-directed process is distinguished from a third-party process in which a third-party is appointed the decision-maker to decide who is right and what is an appropriate remedy. See Jeffrey Scott Wolfe, *Across the Ripple of Time: The Future of Alternative (Or, Is It Appropriate) Dispute Resolution*, 36 TULSA L. REV. 785, 787;789 (2001).

256. Temple Northup, *Is Everyone a Little Bit Racist? Exploring Cultivation Using Implicit and Explicit Measures*, 26 SW. MASS COMM’NS J. 29, 37–38 (2010) (discussing how the media contributes to everyone’s internalization of racist perspectives about people of color).

determination of whether the offending person was racist is not helpful in advancing one of the broader goals: expanding the law school community's knowledge about racism, racism stressors, and the constructive management of these stressor. Moreover, a third-party directed process such as a disciplinary hearing would have a chilling effect on professors' efforts to include racism education in their course if a risk was triggering a student's racial stressors and then having to defend oneself in a disciplinary hearing.

Therefore, the recommended design suggests such party-directed processes as direct student-professor conversations; facilitated conversation among the student, professor, and designated administrators; and mediation involving the stressed student and offending professor. Some students might shun having direct conversations with the offending professor, however, because of the power differential between students and professors and the students' fear of retribution. Therefore, the design should also designate law school personnel, such as the dean of students or the diversity and inclusion director, with whom the student might report the stress-inducing event. The designated person should a lawyer who is trained in facilitating discussions about race. That designated person can then convene a party-directed meeting with the offending professor.

All these processes should be confidential. However, the larger lessons learned from these individual interventions could be shared at a general meeting with the broader community, without violating the confidentiality of the parties. The law school's recommended policy and procedures for handling racial stressors should be publicized in the student handbook and in student organizations so that students are reassured that the law school is serious about address racism and has provided students with multiple ways to have their concerned addressed The broader goal of this design should never be lost: to create a psychologically safe and supportive environment to manage and harness the power of differentiated racial stressors.

A basic tenet of designing a system to resolve disputes is to try to resolve disputes at the earliest time possible.<sup>257</sup> Thus, when a student is experiencing racial stress because of the way the student responds to the professor's method of teaching racism, one option is for the student to speak with the professor to address this concern. For a student to choose this option, the student and professor need to have some degree of trust in their relationship. In a personal example, when two students in my class *Mediation: Representing Clients* were assigned to represent an accused discriminator, the students met with me and shared the anxiety and psychological pain they were experiencing, because the company was accused of behaving contrary to the students' core values.<sup>258</sup> Fortunately, I had worked with the students in other small classes, and they trusted me enough to express their discomfort and try to resolve the matter. However, for students in a larger class, there may be little opportunity to engender that degree of trust. Moreover, the hierarchical nature of the student/professor relationship in law school may make this an unrealistic option unless there is a pre-existing, trusting relationship between the student and professor. Alternatively, the offended student, may prefer to report the incident to a trained administrator. That administrator may then have a learning discussion with the offending professor about the incident.

Another option is a facilitated conversation in which a designated administrator conducts a conversation with the student and the professor. The convener could be anyone in the administration, such as the dean of students or the diversity officer, who can provide a safe environment for discussing racial stressors and racism pedagogy. For some, the opportunity to meet and discuss in a safe place empowers the parties to address the issue and move forward wiser.

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257. See John Lande & Peter W. Benner, *Why and How Businesses Use Planned Early Dispute Resolution*, 13 U. ST. THOMAS L.J. 248, 266 (2017) (explaining that resolving disputes quickly and efficiently saves resources).

258. However, a central point of legal education is to provide students with the skills to represent all types of clients, not just the ones whose values align with those of the students. Possibly, when they become lawyers, they may have the luxury of deciding which clients they will represent.

Mediation is a third option when a student and the professor cannot resolve the issue in facilitation and require a convener with mediation skills to help the parties resolve the issue and created a more enlightened law school culture about racism. These processes, when embedded in a law school culture that supports racism education, are helpful to address racial stressors.

*E. Yes, but . . .*

Some may read this proposed design and question if this non-punitive, voluntary approach to offering racism education could work. This author recognizes that for some, this approach reactivates the debate about whether restorative justice, instead of retributive justice, actually provides justice.<sup>259</sup> This author believes that a restorative justice approach is a more appropriate response to dealing with racial stressors and the fear of cancelling. It helps create an environment where all law school community members, including the offending member, have a voice, are involved in learning about racism, and are receptive to taking responsibility for creating an anti-racist culture. This suggested approach creates a law school environment that supports learning about racism, including making mistakes when professors teach racism. A retributive justice approach, however, would only ferment more stress and fear. This article postulates that a student's racial stress and a professor's fear of being stamped as racist, even though everyone is racist, has had a chilling effect on a professor's willingness to include racism education in the law school curriculum. This restorative approach attempts to mitigate this stress and fear.

Still, others may read this paper and raise that more needs to be done if we are committed to racism education and want to ensure the permanent inclusion of racism education in the law school curriculum.<sup>260</sup> Such enthusiasts point to the Multistate

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259. See Tyler G. Okimoto et al., *supra* note 219, at 158 (describing restorative justice, a bilateral discussion, as an alternative justice response that is a fairer response to transgressions than retributive justice, a unilateral decision).

260. See Amy Gaudion, *Exploring Race and Racism in the Law School Curriculum: An Administrator's View on Adopting an Antiracist Curriculum*, 23

Professional Responsibility Examination as one reinforcement message that ethics is a central part of legal practice. Should aspiring lawyers be required to also take a test on how to manage racism in the law? What is going to be done to ensure that racism education is not just a passing fad? And still, others may read this paper and question whether racism education even needs to be part of a law school curriculum.

*F. How Individual Law Professors Could Integrate Racism Education in their Course without Institutional Support*<sup>261</sup>

Even though every law school might not see the value in including racism education in their law school curriculum, individual professors might still take initiative and include racism education in their courses without the support of the administration or faculty. Caveat! Doing so alone without institutional support is not without peril. Should a miscommunication or blow-up arise between a student and professor because of the way the racism education lesson was taught or received, the professor has a heightened risk of being cancelled.

To begin, the professor should engage in a self-exploration of their own biases and reactions to racism. This will help heighten their own self-awareness of their racial stressors when engaging with students and teaching racism. Second, professors may find it helpful to find the support of like-minded colleagues. If the law school administration and faculty are not a receptive resource, individual professors can reach out to like-minded local and national colleagues. For example, the New York Area Law School Anti-Racism Consortium is a coalition of law school administrators, professors and students who are learning from

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RUTGERS RACE & L. REV. 131, 135 (2022) (describing the need for re-alignment and re-envisioning of legal education because of its history with enabling and perpetuating racism).

261. See *Race and the Law School Curriculum*, FORDHAM U. SCH. L. (describing how CRT could be part of Clinical Legal Education) [perma.cc/C6BF-CGSD].

each other about how to institute anti-racism efforts in their respective courses and within their schools.<sup>262</sup>

Once the professor feels ready to include racism in her course, the professor should communicate to the class that the professor is creating a safe and receptive environment for such learning to take place. This communication can take place in multiple ways. First, the professor can communicate that in their syllabus by stating it upfront in a Diversity, Equity, & Inclusion Statement. As one example: *I am committed to creating an inclusive learning environment where diverse perspectives are recognized, respected, and seen as a source of strength.*<sup>263</sup> In addition, the professor can explicitly state this is one of the learning objectives of the course. As an example, “*Develop an awareness of the potential impact factors, such as culture, gender, age, race, and biases, may have on the lawyer-client relationship.*”

The professor then communicates this commitment by creating a class culture of openness, acceptance, and trust by the way the professor engages with all students. Moreover, the professor acknowledges that all students and the professor come to the discussion of racism with their own stressors. A significant part of their education is learning to manage those stressors so lawyers can become effective advocates. Thus, when racism is discussed, be it as part of a case or simulation debrief, all students should be encouraged to participate in the conversation, rather than burdening a Black student in the class to be the voice of all those who have experienced racism. Prior to a case or simulation that implicates racism, the professor should signal that an individual’s racial stressors might be stoked. This signal is not a reason for students to absent themselves from the exercise, but a signal that the student should ready themselves for experiencing

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262. See Jill Backer, *New York City-Area Law Schools Form Law School Anti-Racism Consortium*, N.Y.L.J. (Jan. 29, 2021, 10:45 AM) (outlining the coalitions goals of supporting (1) indigenous, Black and other students of color and alumni/ae, (2) identifying, confronting, and exploring the impact of racism on law with their students, faculty, administration and larger community, and (3) centering racial justice as a concrete practice in every area of legal education and the legal profession) [perma.cc/346A-H7CQ].

263. I thank my colleague Professor Renee Nicole Allen for sharing her syllabus.

stress and be open to learning how to manage that stress. And yes, when racism is then discussed as part of the case or simulation debrief, the professor should also include strategies for students to manage their individual racial stressors.<sup>264</sup>

Thus, whether racism education is addressed as part of a comprehensive law-school initiative or by a committed law professor, the overall approach is similar: heighten self-awareness about racism stressors, create a committed and psychologically safe culture to educate about racism education, acknowledge that all participants might react differently, educate about strategies to manage racial stress, and create an open dialogue about what is and is not working.

### V. Conclusion

“I have learned over the years that when one’s mind is made up, this diminishes fear.”<sup>265</sup> When I shared the drafts of this paper with multiple colleagues, their reactions were variations on a theme: “How brave.” One colleague even asked if I intended to be forced into premature retirement after the paper was published, because it would certainly signal the death knell of my career. And that, readers, is the point of this paper. *How might law schools constructively manage the high anxiety and differentiated stressors of their community members when racism education is discussed?*

On a personal level, it requires all of us to self-reflect about how, over the course of our lifetime, our values, our religious beliefs, our human connections, and our life choices have been contaminated by racism and have made us racist. Continuing that personal self-reflection, do we have the courage to dismantle our racist beliefs and engage in meaningful anti-racist activism?

This paper presents a dispute system design framework for law schools to consider to help diminish the fears surrounding racism education. It requires an understanding of how the subject of racism evokes differentiated stress in the law school’s students,

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264. See KISER, *supra* note 242, at 58 (mentioning how Dean Larry Cunningham suggests cognitive behavioral therapy strategies as a tool for managing stress).

265. ROSA PARKS FACTS [perma.cc/JG3P-5Z2P].

faculty, and administration. It requires an acknowledgement that racial stress, if ignored or not properly managed, can have a chilling effect and potentially derail the law school's efforts to include racism education in the law school's curriculum. It provides a supportive culture and skills to constructively manage that stress and learn from the inevitable offenses and miscommunications about racism.

The time for our law schools to address racism, the undergirding of our legal system, is past due. Now that some law school communities are contemplating how to provide a more honest education about the role of racism in the law, they are also compelled to address the differentiated stressors that are triggered by discussions of racism. This is a welcome opportunity to get past the fears and expand our understanding about racism. If done thoughtfully, law schools can help educate aspiring lawyers to harness the power of racial stress and become effective change agents to address racism in the law.

This call for responsible social action cannot be ignored. Even though this discussion takes place in the law school context, we are also living this discussion each day, everyday, as our country continues to struggle with its racist history. A looming threat is whether the racism that is polarizing our country will eventually be the deathknell of our democracy. And, we may all have different predictions about the perniciousness of racism and the fate of our democracy.

This paper invites law schools and legal educators to walk through the fire,<sup>266</sup> optimistically believing that we all have the courage to constructively address racism, if each one of us can learn how to manage the anxiety triggered by racial stressors in ourselves and in our students.

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266. See generally PEMA CHODRON, *WHEN THINGS FALL APART: HEART ADVICE FOR DIFFICULT TIMES* (1996) (writing that moving towards painful situations and becoming intimate with them can open up our hearts in ways we never before imagined).